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No. 90-1059

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

SIMON & SCHUSTER, INC.,

Petitioner,

—v.—

MEMBERS OF THE NEW YORK STATE CRIME VICTIMS BOARD, GENNARO FISCHETTI, GEORGE L. GROBE, JR., DIANE MCGRATH, and ANGELO PETROMELIS,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED DECEMBER 28, 1990
CERTIORARI GRANTED FEBRUARY 19, 1991

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RELEVANT DOCKET ENTRIES

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK
87 Civ. 5582

1.	Complaint filed, summons issued.	August 3, 1987
3.	Defendants' answer filed.	August 24, 1987
6.	Plaintiff's notice of motion for summary judgment and supporting papers filed.	December 21, 1987
10.	Defendants' notice of cross-motion for summary judgment and supporting papers filed.	March 15, 1988
27.	Transcript of September 19, 1988 oral argument filed.	November 10, 1988
28.	Opinion and order denying plaintiff's motion for summary judgment and granting defendants' cross-motion for summary judgment and dismissing complaint.	October 26, 1989
29.	Judgment entered for defendants.	October 30, 1989
31.	Notice of appeal.	November 17, 1989

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
No. 89-9192

	Opinion and judgment filed.	October 3, 1990

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

SIMON & SCHUSTER, INC.,

Plaintiff,

— against —

RONALD ZWEIBEL, GENNARO FISCHETTI, GEORGE L. GROBE, JR., DIANE McGRATH, and ANGELIS PETROMELIS, individually and in their capacities as members of the New York State Crime Victims Board,

Defendants.

Civil Action No.
87 Civ. 5582
(RJD)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. INTRODUCTORY STATEMENT

1. This is a civil action brought under 42 U.S.C. Section 1983 seeking declaratory and injunctive relief regarding New York Executive Law Section 632-a. Commonly referred to as "the Son-of-Sam law," Section 632-a requires a publisher contracting for a book with any person who has been accused or convicted of a crime to pay over to the New York State Crime Victims Board ("the Board") any monies owing to such person if the book contains a "reenactment" of the crime, or an expression of that person's thoughts, feelings, opinions or emotions regarding the crime. Because the application of Section 632-a to any particular book depends on the book's content, because it targets for special adverse treatment only those assets of or due to an accused or convicted criminal which derive from the exercise of the right of freedom of speech and of the press, and because in practice it effectively precludes the publication of certain books, the law violates the First Amendment to the United States Constitution. Plaintiff Simon & Schuster, Inc. ("Simon & Schuster") seeks a declaration that Section 632-a violates the First Amendment on its face and as applied, and an injunction barring its continued enforcement.

II. JURISDICTION

2. This Court has jurisdiction of this action by virtue of 28 U.S.C. Sections 1331 and 1343(3), conferring jurisdiction over claims brought under 42 U.S.C. Section 1983 to enforce rights guaranteed by the United

States Constitution. Declaratory relief is authorized by 28 U.S.C. Sections 2201 and 2202, and attorneys' fees are authorized by 42 U.S.C. Section 1988.

3. Venue is proper in this district under 28 U.S.C. Section 1391(b).

III. PARTIES

4. Simon & Schuster is and at all relevant times has been a corporation organized and existing under the laws of the State of New York, with its principal place of business in the City, County, and State of New York. Simon & Schuster has for more than fifty years been one of this nation's leading and most respected book publishers. In addition to its other publishing activities, Simon & Schuster publishes biographies, autobiographies, and other works of non-fiction relating to or touching upon events that may constitute crimes in the State of New York. Simon & Schuster published the hardcover edition of Nicholas Pileggi's book on organized crime in America, entitled *Wiseguy*, in 1985. (A copy of *Wiseguy*, Exhibit A hereto, is being lodged with the Clerk of the Court.) Among the other books published by Simon & Schuster that concern events that may constitute crimes and were written by persons admitting to or convicted of crimes are *Blind Ambition* by John Dean and *Witness to Power* by John Erlichman.

5. Defendant Ronald A. Zweibel is Chairman of the New York Crime Victims Board, an agency of the State of New York created by New York Executive Law Section 622. Defendants Gennaro Fischetti, George L. Grobe, Jr., Diane McGrath, and Angelis Petromelis are the additional members of the Board. The Board is charged by law with the responsibility of enforcing Section 632-a. At all relevant times, defendants have acted under color of state law.

IV. FACTUAL ALLEGATIONS

6. In early 1981, Simon & Schuster became aware that Henry Hill, who had been a career criminal and involved in organized crime since he was a youth, was talking to federal prosecutors as part of the Witness

Protection Program. Executives at Simon & Schuster conceived the idea of publishing a book that would provide for the first time an inside look at life in "the mob" and would show what working for the mob actually entailed. The book Simon & Schuster envisioned would be an antidote to other books romanticizing organized crime.

7. Michael Korda, editor-in-chief at Simon & Schuster, thereupon contacted the Sterling Lord Agency, Inc. ("Sterling Lord"), a literary agency in New York, and asked Sterling Lord for assistance in finding an appropriate author for a book using Hill's story. Sterling Lord suggested to Korda that Nicholas Pileggi, one of its clients, a well-known journalist and writer about organized crime, would be an ideal author for the book. Pileggi had previously written articles on crime, organized crime, and municipal corruption for *The New York Times Magazine*, *Esquire*, *Reader's Digest*, *Life Magazine*, and *New York Magazine*, as well as a well-reviewed book on the life of a private detective entitled *Blye, Private Eye*.

8. Korda met with Pileggi concerning the proposed project. They discussed a book that would be an inside look at growing up in the mob, describing for readers how the mob operates and the daily life of its participants, a book quite different from anything then available.

9. Hill's cooperation and participation were essential for the book Simon & Schuster envisioned, and Pileggi and Simon & Schuster were informed that Henry Hill was willing to cooperate if, and only if, he were paid for his story. Before Pileggi committed himself, he had lengthy discussions with the chief of the federal organized crime strike force in the United States Attorney's Office in the Eastern District of New York; FBI agents in the Queens, New York, Office; a Nassau County Police detective; and Thomas Puccio, then an Assistant United States Attorney in the Southern District. In light of Pileggi's intention to portray the realities of a life of crime, these individuals, who were familiar with Henry Hill, agreed to cooperate with Pileggi should he decide to create the proposed work.

10. On August 21, 1981, Pileggi entered into a written agreement between himself, Sterling Lord, and Hill concerning the preparation and

sale of a book to be authored by Pileggi concerning Hill's experience with organized crime. Under that agreement, Sterling Lord agreed to act as the literary agent for Pileggi and Hill. (A copy of that agreement as annexed to the Board's order, hereafter "the August 1981 Agreement," is attached hereto as Exhibit B.)

11. On September 1, 1981, Simon & Schuster, Pileggi, and Hill entered into an agreement ("the Publishing Agreement") for an autobiographical non-fiction work "about the Mafia." (A copy of that agreement as annexed to the Board's Order is attached hereto as Exhibit C.) Under the Publishing Agreement, Simon & Schuster was to pay specified monies to Sterling Lord for the benefit of Pileggi and Hill. Sterling Lord was to retain a standard literary agent's fee of ten percent of any and all monies payable to Pileggi and Hill.

12. In January 1986, Simon & Schuster published *Wiseguy*. As Simon & Schuster described the book in the inside jacket:

> *Wiseguy* is the life story of Henry Hill, a career criminal who literally grew up in the mob. For the first time, often in Hill's own words, the reader is swept into the day-to-day workings of a life of crime, from the truth about the Lufthansa heist (and the ten murders which follow) to the inside story of the Sindona case — which nearly caused the collapse of the Vatican Bank — as well as the Boston College point-shaving scandal and countless other infamous crimes, all brought to life by a major player in the deadly high-stakes game some people call the Mafia.
>
> In *Wiseguy*, Nick Pileggi shows the reader the bitter truth about professional crime in America.
>
> This is no "guided tour." The reader is taken deep inside the inner workings of organized crime, a trip made possible only by the investigative skills of an expert — and the cooperation of one of the criminals.
>
> *Wiseguy* is more extraordinary — and more compelling — than any novel. It is a firsthand account of a secret world, more brutal and far more fascinating than any of the novels that have glamorized it, and it is based on the searing testimony of a man who has run-and-done it all.

13. *Wiseguy* was well reviewed and widely acclaimed as a skilled and revealing book on an important subject which had not previously been adequately addressed. The reviews commended the work for de-mystifying and de-glamorizing the activities of organized crime. Jimmy Breslin writing in the *New York Daily News* called *Wiseguy* "the best book on crime in America ever written." The *Washington Post* called *Wiseguy* an "amply detailed and entirely fascinating book that amounts to a piece of revisionist history"; the *Kansas City Star* termed it "a compelling look at the blue collar criminal . . . as coldly factual as a news story." To date *Wiseguy* has sold more than 90,000 copies in its trade edition. Simon & Schuster published a softcover edition of *Wiseguy* in February 1987, and to date more than 1,000,000 copies are in print.

14. New York Executive Law Section 632-a is directed solely at monies earned by the exercise of the right of expression. It applies to every contract for a book, movie, or magazine article with a person accused or convicted of any crime in New York with respect to the "reenactment" of a crime or to the accused or convicted person's expression of thoughts, feelings, opinions or emotions regarding a crime. Persons who admit the commission of crimes in such works are considered as having been "convicted", even if they are not prosecuted. Section 632-a requires payment to the Board of any monies which would otherwise be owing under the contract to the person so accused or convicted or to his representatives. The Board is required to deposit such monies in an escrow account for the benefit of any victim of any crimes committed by such person. Monies from the escrow fund are payable to a victim if (and only if) the victim recovers a money judgment for damages against such person in a civil action commenced within five years of the date of the establishment of the escrow fund. Unless any victim commences an action, the funds are returned after being held for the five-year period. Section 632-a does not require that any assets of such persons except those deriving from the exercise of the right of expression be held for the benefit of such

victims, and books by such persons on subjects other than their crimes are not subject to its application. (A copy of Section 632-a is attached hereto as Exhibit D.)

15. By letter of January 31, 1986, the Board requested Simon & Schuster to provide it with a copy of the Publishing Agreement and certain other information concerning *Wiseguy*. The Board's letter also contained a sweeping request for copies of all of Simon & Schuster's contracts on any books subject to Section 632-a; the names of any accused or convicted criminals, suspected assignees or representatives with whom Simon & Schuster was dealing; information concerning payments to any such persons; the description, location and dates of any crimes committed; and the names of any known victims of any crimes related in any such proposed books. (A copy of that letter is attached hereto as Exhibit E.) After discussions between the Board and Simon & Schuster, the Board narrowed its request to matters involving *Wiseguy*, and on May 22, 1986, Simon & Schuster provided all of the information requested.

16. On June 15, 1987, the Board served on Simon & Schuster a Proposed Determination and Order, which by its terms becomes final thirty days after its service if no fact-finding hearing were requested. No hearing was requested, and the Order therefore became final as to Simon & Schuster on July 15, 1987. (A copy of that Order is attached as Exhibit F.) In the Order, the Board concluded that *Wiseguy* is subject to Section 632-a because it contained Hill's thoughts, feelings, opinions and emotions regarding, and admission to participation in, criminal activity; that Simon & Schuster violated Section 632-a by failing to turn over to the Board the Publishing Agreement in September 1981; and that Simon & Schuster violated Section 632-a by paying $96,250 to Sterling Lord for the account of Henry Hill. The Board ordered Simon & Schuster to turn over to it the additional monies payable to Hill currently held by Simon & Schuster, as well as any and all future royalties or other monies which would become payable to Hill or Sterling Lord. The Board further ordered Simon & Schuster to turn over $96,250, the amount which it had previously paid to Sterling Lord for Hill, in the event that Henry Hill failed to promptly turn over that sum to the Board. Sterling Lord was ordered to pay to the Board

all monies it received or will receive on Hill's account, as well as the monies it received as Hill's representative.

17. The Board's enforcement of Section 632-a against publishers, including Simon & Schuster, interferes with the publication of biographies, autobiographies and other works of non-fiction on some of the most pressing social issues of the day, by effectively prohibiting the compensation of a class of authors, sources, and literary agents. Publishers could not have paid, or would have been deterred from paying, compensation to commission such critically acclaimed and socially useful works as Eldridge Cleaver's *Soul on Ice*, *The Autobiography of Malcolm X*, Martin Luther King, Jr.'s *Where Do We Go From Here?*, Henry David Thoreau's *On Civil Disobedience*, Norman Mailer's *The Armies of the Night*, John Erlichman's *Witness To Power*, and John Dean's *Blind Ambition* under section 632-a or statutes like it in other jurisdictions.

18. Defendants have caused and are continuing to cause Simon & Schuster damage and irreparable harm by (1) impairing Simon & Schuster's ability to enter into and perform contracts providing for payments to certain authors or other persons whose paid cooperation is essential for the publication of certain works; (2) ordering Simon & Schuster to pay to the Board a sum of money equal to any sums previously paid to Sterling Lord or Hill, and (3) ordering Simon & Schuster to pay to the Board monies that will become due Sterling Lord and Hill.

19. Simon & Schuster is in genuine doubt concerning its First Amendment rights to publish books and to make necessary payments for such books, and the inconsistent obligations precluding such payments that the Board asserts are imposed by Section 632-a. Plaintiff requires and seeks declaratory relief to resolve that dilemma. Plaintiff has no adequate remedy at law.

V. CAUSES OF ACTION

20. Section 632-a violates Simon & Schuster's right of freedom of speech and of the press under the First Amendment to the United States

Constitution, made applicable to the states by the Fourteenth Amendment, in the following respects:

a. The Board's application of Section 632-a to any work depends on the topic and contents of the work, in violation of the First Amendment's prohibition of content-based regulation of speech;

b. Section 632-a targets only assets derived from the exercise of constitutionally protected activity, and not any assets derived from non-protected activities, in violation of the First Amendment's prohibition of differential regulation of First Amendment activity;

c. Section 632-a is substantially overbroad, interfering with the right to commission and obtain books for publication and sale, in violation of the First Amendment's prohibition of restraints on freedom of the press; and

d. Section 632-a was intended to and does deter the creation and publication of books about crime written by or with the assistance of persons who admit or are convicted or accused of crimes.

21. Section 632-a violates Simon & Schuster's right not to be deprived of liberty or property without due process of law by its vagueness and failure to provide sufficiently definite guidance as to which contracts or books fall within its purview, in violation of the First and Fourteenth Amendments to the United States Constitution.

VI. PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully requests:

1. An order declaring Section 632-a unconstitutional in violation of the First and Fourteenth Amendments to the Constitution of the United States, on its face and as applied;

2. An injunction prohibiting defendants and their agents, successors and employees from taking any steps to apply or enforce Section 632-a;

3. An order awarding plaintiff costs and attorneys' fees, pursuant to 42 U.S.C. Section 1988; and

4. Such other and further relief as the Court may deem just and proper.

August 3, 1987

/s/

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(212) 909-7032

Attorneys for Simon & Schuster, Inc.

CAPTION OMITTED

ANSWER

Defendants RONALD ZWEIBEL, GENNARO FISCHETTI, GEORGE L. GROBE, JR., DIANE McGRATH, and ANGELIS PETROMELIS, by their attorney ROBERT ABRAMS, Attorney General of the State of New York, for their answer to the complaint, respectfully allege:

1. Lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 1, 2, 3, 4, 6, 7, 8, 9, 10, 11 and 13 of the complaint.

2. Admit the allegations contained in paragraph 5 of the complaint, except deny that defendant Ronald A. Zweibel is currently Chairman of the New York State Crime Victims Board ("the Board").

3. Lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the complaint and refer to the book *Wiseguy*, filed with the Court as Exhibit A to the complaint, for an appropriate characterization thereof.

4. Deny the allegations contained in paragraph 14 of the complaint but refer to the applicable statute for an appropriate characterization thereof.

5. Admit the allegations contained in paragraph 15 of the complaint but refer to the Board's letter, annexed as Exhibit E to the complaint, for an appropriate characterization thereof.

6. Admit the allegations contained in paragraph 16 of the complaint, except allege that the proposed order did not become final because of objections filed by interested parties other than plaintiff.

7. Lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 of the complaint, but deny that the Board interferes with the publication of any books.

8. Deny the allegations contained in paragraph 18 of the complaint and refer to the Board's proposed order, annexed as Exhibit F to the complaint, for an appropriate characterization thereof.

9. Deny each and every allegation contained in paragraphs 19, 20 and 21 of the complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE,

10. The complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE,

11. Plaintiff lacks standing to challenge the constitutionality of Executive Law § 632-a.

WHEREFORE, defendants demand judgment dismissing the complaint, together with the costs of this action.

Dated: New York, New York
August 24, 1987

ROBERT ABRAMS
Attorney General of the
State of New York
Attorney for Defendants
By:

/s/

DOUGLAS D. ARONIN
Assistant Attorney General
120 Broadway
New York, New York 10271
(212) 341-2621

TO: CHARLES S. SIMS, ESQ.
Proskauer Rose Goetz
& Mendelsohn
Attorneys for Plaintiff
300 Park Avenue
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CAPTION OMITTED

NOTICE OF MOTION

PLEASE TAKE NOTICE that upon accompanying affidavits of Elizabeth A. McNamara, Michael Korda, Nicholas Pileggi, Sterling Lord, Gerald E. Hollingsworth, Jan F. Constantine, Jason McManus, and Phyllis E. Grann, the exhibits annexed thereto, the Rule 3(g) Statement submitted herewith, and upon all prior papers and proceedings in this action, plaintiff will move this Court, before the Honorable Richard J. Daronco, United States District Judge for the Southern District of New York, in Courtroom 414 of the United States Courthouse, New York, New York, at 9:00 a.m. on the 21st day of March, 1988, for an order pursuant to Rule 56 of the Federal Rules of Civil Procedure, granting plaintiff summary judgment on its claim that the New York Executive Law Section 632-a violates the First and Fourteenth Amendments to the United States Constitution on its face and as applied. There are no genuine issues of material fact and plaintiff is entitled to judgment as a matter of law. The grounds for this motion are more fully set forth in the affidavits and memorandum of law submitted herewith.

Dated: New York, New York
December 21, 1987

Yours, *etc.*

PROSKAUER ROSE GOETZ
& MENDELSOHN

/s/

300 Park Avenue
New York, New York 10020
(212) 909-7000

To:

Douglas Aronin, Esq.
Assistant Attorney General
120 Broadway
New York, New York 10271

CAPTION OMITTED

AFFIDAVIT OF ELIZABETH A. McNAMARA

Elizabeth A. McNamara, being duly sworn, deposes and says:

1. I am an associate counsel of Simon & Schuster, Inc. I make this affidavit on behalf of Simon & Schuster, in support of its motion seeking summary judgment for declaratory and injunctive relief against New York Executive Law Section 632-a, the so-called Son of Sam law.

2. Simon & Schuster is the publisher of *Wiseguy*, by Nicholas Pileggi. (A copy of *Wiseguy*, Exhibit 1 hereto, is being lodged with the Clerk of the Court.) Since the New York State Crime Victims Board's initial inquiry in January 1986 concerning *Wiseguy*, I have been involved in preparing Simon & Schuster's response to the Board's inquiries concerning *Wiseguy*. I make this affidavit on personal knowledge.

Section 632-a

3. New York Executive Law Section 632-a applies to every contract for a book, movie, interview, and magazine article with a person "accused" or "convicted" of any crime with respect to the "reenactment" of a crime or to the accused's thoughts, feelings, opinions, or emotions regarding a crime. Section 632-a(l). The statute defines "convicted" to include persons who "voluntarily admit" the commission of crimes (apparently even indirectly, by discussion of facts or events in literary writings) but who are not prosecuted, as well as persons acquitted by reason of mental disease or defect. Section 632-a(5), 10(b).

4. Section 632-a requires that each such contract be provided to the Board, and prohibits payment of any monies owing under the contract to the accused or convicted person or to his representative; such payments must instead be made to the Board. Section 632-a(1). The Board is required to deposit such monies in an escrow account for the benefit of any victim of any crimes committed by such person. *Id.* Monies from the

escrow fund are payable to a victim only if and when the victim recovers a money judgment for damages against the accused in an ordinary civil tort action commenced within five years of the date of the establishment of the escrow fund. *Id.* If no victim commences an action within the five-year period, the funds are returned to the accused or convicted person. Section 632-a(4).

5. Section 632-a applies only to contracts whose performance consists of the exercise of the rights of free speech and free press. A contracting party is not required to turn any assets over to the Board for the benefit of victims of an accused or convicted person except those assets deriving from the exercise of the right of expression. Section 632-a(1). And it applies only to contracts for expression on a particular subject — the crime which the accused or convicted person is said to have committed. *Id.*

The Board's Application of Section 632-a to *Wiseguy*.

6. On September 1, 1981, Simon & Schuster, Nicholas Pileggi, and Henry Hill entered into an agreement ("the Publishing Agreement") for a work about organized crime. (A copy of that agreement was annexed as Exhibit A to the Board's Proposed Determination and Order concerning *Wiseguy*. A copy of the Proposed Determination and Order with annexed exhibits is attached hereto as Exhibit 2.) Under the Publishing Agreement, Simon & Schuster acquired specific literary rights in the work and agreed to pay specified monies to Sterling Lord, literary agent for Pileggi and Hill, for their benefit. Sterling Lord was to retain a standard literary agent's fee of ten percent of the monies payable to Pileggi and Hill. The financial arrangements embodied in the Publishing Agreement, providing for payment of advances and periodic payment of royalties as earned, accorded with standard industry practice.

7. Agreements to compensate both a writer and a primary source (one who spends substantial time providing information to an author) for a book to be published are common practice both for Simon & Schuster and the publishing industry generally.

8. By letters to Simon & Schuster and Nicholas Pileggi dated January 31, 1986 the Crime Victims Board directed Simon & Schuster to provide extensive information concerning *Wiseguy* and any other unspecified projects that were potentially subject to Section 632-a. (Copies of those letters are attached as Exhibits C and D to Exhibit 2.) After discussions between the Board and Simon & Schuster, the demand was narrowed to matters involving *Wiseguy*, and in May 1986 Simon & Schuster provided the Board with all of the information requested. The Board's letter further asked that all payments in connection with *Wiseguy* be suspended. Simon & Schuster complied with this request by suspending payment of all sums due Henry Hill.

9. After a year's consideration, the Board issued its Proposed Determination and Order concerning *Wiseguy* on May 27, 1987 and served Simon & Schuster on June 15, 1987. That Order by its terms was to become final thirty days after its service on Simon & Schuster, that is, on July 15, 1987, unless a fact-finding hearing was earlier requested. *See* Order, Exhibit 2. Simon & Schuster did not request such a hearing, and received no notice of any such request prior to July 15, 1987 by any other person. We have, moreover, been informed by counsel for defendants that no hearing was requested prior to July 15, 1987.

10. The Board's Order directs Henry Hill to pay to the Board all monies previously received from Simon & Schuster under the Publishing Agreement; if Hill fails to comply within 30 days of the Order becoming final, Simon & Schuster is directed to pay those sums to the Board. In addition, Simon & Schuster is directed to pay to the Board all monies that will become due to Sterling Lord and Hill in the future under the Publishing Agreement. Pending clarification of its rights in this lawsuit, since the Board's direction to suspend such payments in January 1986, Simon & Schuster has continued to withhold all sums due Henry Hill.

11. Section 632-a impairs Simon & Schuster's ability to conclude contracts that arguably fall within the statute's reach. If presented with a contract proposal that on its face brings the envisioned book within Section 632-a, I would advise our editor and the author (or source) that any monies

due under the contract would be payable to the Board. The inevitable result of that advice is that the author or source will not enter into the contract and the book will not be published. It is my experience — and is clearly the industry standard — that people expect to be, and are, compensated for writing books. If a publisher cannot compensate authors, or must delay the compensation, the book cannot be published. Moreover, the additional burdens on management, editorial and legal resources that potentially covered projects create, will often alone be enough to deter the consideration of such projects.

12. The publication of fewer books is not the only effect of Section 632-a. The statute also affects editorial decisions and will inevitably result in the censorship of certain subjects. Because of the statute's breadth and its vagueness, as an attorney for a publisher I am compelled to give the statute a broad interpretation to avoid publication of a book that falls within its reach. Thus, I am forced to present my client with a difficult, and unprecedented, set of alternatives. As set forth above, we can forego a project that might implicate the Son-of-Sam statute. Alternatively, we can edit and excise any material that might somehow involve an "admission" of a crime or in any way refer to (or reenact) a crime by the author, no matter how long ago or how incidental to the purpose of the book. Lastly, we could submit the contract or the manuscript to the Board for what would be, in effect, a pre-publication review of the content of a book by a governmental agency.

13. As Michael Korda, Simon & Schuster's Editor-in-Chief, very cogently notes in Paragraph 17 of his affidavit, this set of alternatives cannot be consistent with the First Amendment guarantee of freedom of speech and of the press. For the reasons set forth here and in the affidavit of Michael Korda, I respectfully urge this Court to grant Simon & Schuster's motion for summary judgment and an order declaring Section 632-a unconstitutional under the First Amendment.

/s/
Elizabeth A. McNamara

SUBSCRIPTION OMITTED

CAPTION OMITTED

AFFIDAVIT OF MICHAEL KORDA

Michael Korda, being duly sworn, deposes and says:

1. I am editor-in-chief and senior vice-president of Simon & Schuster, Inc. I make this affidavit, based on my own personal knowledge, on behalf of Simon & Schuster, in support of its motion seeking summary judgment for declaratory and injunctive relief against New York Executive Law Section 632-a, the so-called Son of Sam Law.

Simon & Schuster's Publication of *Wiseguy*

2. Simon & Schuster has for more than fifty years been one of this nation's leading and most respected book publishers. In addition to its other publishing activities, Simon & Schuster publishes biographies, autobiographies, and other works of non-fiction relating to or touching upon events that may constitute crimes in the State of New York. Simon & Schuster published the hardcover edition of Nicholas Pileggi's book on organized crime in America, entitled *Wiseguy*, in 1985. Simon & Schuster has published other books concerning events that may constitute crimes and that were written by persons admitting to or convicted of crimes, including *Blind Ambition* by John Dean, considered by many to be the best book written on Watergate, and *Witness to Power* by John Erlichman.

3. In early 1981, I learned that one Henry Hill, who had been substantially involved in the activities of organized crime in New York and who was cooperating with federal prosecutors as part of the witness protection program, was attempting (through his attorney) to see if any publishers might be interested in his story.

4. Richard Snyder, Chairman and Chief Executive Officer of Simon & Schuster, and I then conceived the idea of publishing a book that would provide for the first time an inside look at life in organized crime and would show what working for "the mob" actually entailed. The book we

envisioned would be an antidote to other books romanticizing organized crime. We believed that such a book could be both extremely interesting and commercially workable, *if* the right writer could be found to undertake the project.

5. I contacted Sterling Lord, of the Sterling Lord Agency, Inc., a leading literary agency in New York, and asked him for assistance in finding an appropriate author for a book using Hill's story. Lord suggested that Nicholas Pileggi, one of his clients, a well-known journalist and writer about organized crime, would be an ideal author of the book. Pileggi had previously written articles on crime, organized crime, and municipal corruption for *The New York Times Magazine, Esquire, Reader's Digest, Life Magazine, and New York Magazine*, as well as a well-reviewed book on the life of a private detective entitled *Blye, Private Eye*.

6. I soon met with Pileggi concerning the proposed project, and it became immediately clear that Pileggi — who knew of Hill — shared our belief that in Pileggi's hands, Hill's story was a useful and important one to tell. We discussed a book that would be an inside look at growing up in the mob, describing for readers how the mob operates and the daily life of its participants, a book quite different from anything then available.

7. Henry Hill's extensive cooperation and participation, detailed in the accompanying Declaration of Nicholas Pileggi, were essential for the book Simon & Schuster envisioned. Without Hill's involvement, the book would have lacked the authenticity and bite that it so compellingly has, and that so attracted reviewers and the reading public. But Hill's attorney made it clear that Hill's cooperation was dependent on his being paid for his time and effort.

8. *Wiseguy* was well reviewed and widely acclaimed as a skilled and revealing book on an important subject which had not previously been adequately addressed. The reviews commended the work for de-mystifying and de-glamorizing the activities of organized crime. Jimmy Breslin, writing in the New York *Daily News*, called *Wiseguy* "the best book on crime in America ever written." The *Washington Post* called *Wiseguy* an "amply detailed and entirely fascinating book that amounts to a piece of

revisionist history." The *Kansas City Star* termed it "a compelling look at the blue collar criminal . . . as coldly factual as a news story." (Copies of these and other reviews are attached as exhibit 3.) Two years after its publication, the material in *Wiseguy* was the principal source for a serious analytic essay on organized crime in *The New Republic*. (*See* exhibit 4.) *Wiseguy* has sold more than 90,000 copies in its trade edition. Simon & Schuster published a softcover edition of *Wiseguy* in February 1987 and more than 1,000,000 copies are in print.

Section 632-a Impairs First Amendment Interests

9. Section 632-a has had and continues to have a substantial inhibiting effect on Simon & Schuster's conduct of its publishing business and First Amendment rights. The statute effectively precludes Simon & Schuster from entering into any publishing agreements that could arguably be subject to it, since it purports to foreclose our ability to compensate authors or primary sources pursuant to standard publishing agreements.

10. By forbidding payment to certain writers and sources, the statute necessarily results in some books not being published. In all my years in publishing, I have never seen an author, and rarely a primary source (one who will have to spend substantial time providing information to an author), who would be willing to undertake the necessary tasks without an enforceable promise that he will be paid, and paid promptly. Most authors and primary sources do not have the financial resources to write without promise of recompense; the hours they spend writing rather than at other work are hours for which they need to be remunerated. Yet the statute precludes us from promising to compensate certain authors or sources at all, and prohibits us from paying them advances or royalties on the standard timely basis — making it as a practical matter impossible to conclude an agreement with an author or source.

11. I have no doubt, for example, that John Dean would not have written *Blind Ambition* if we had been unable to compensate him certainly on a timely basis; when he undertook the book he had substantial obligations (including legal bills due) and needed to earn money to meet them. Based on my conversation with Hill's attorney, I do not believe that

Henry Hill would have assisted Nick Pileggi if he understood that we would be unable to pay him for at least five years.

12. Since learning of the claimed scope and legal consequences of Section 632-a as a result of the Board's involvement with *Wiseguy*, I have been compelled to make it my practice to reject any book that will entangle Simon & Schuster in its net. When the Simon & Schuster editorial board discussed a book on the so-called "preppy murderer", Robert Chambers, I announced that we could not consider the book if Chambers would be participating with the author. The same consideration would, as a practical matter, have effectively precluded our publication of a book by (or with the cooperation of) Claus Von Bulow, until his acquittal; would preclude our publication of autobiographical books discussing their recent activities by or with the substantial assistance of Representative Mario Biaggi, Stanley Friedman, Meade Esposito, Ivan Boesky, Bernhard Goetz, former Surrogate Bertram Gelfand, retired Judge Hortense Gabel, Bess Myerson, Oliver North, and Admiral John Poindexter to name just a few of many available examples. The statute effectively precludes the commissioning and publication of these and other potentially valuable works even if, as is likely, the controversy recently addressed in the news about these individuals were to constitute only a small portion of the book. And the statute applies not only after conviction but before it, at a time when the presumption of innocence still applies, so that (for example) Judge Gabel or Bess Myerson may not be paid for writing books maintaining their innocence.

13. The overbreadth of Section 632-a, and the speechdeterring role it plays throughout the publication process, is easily seen by considering how it would apply to a book Simon & Schuster is in the process of grooming for publication, Jesse Jackson's forthcoming autobiography *A Time To Speak*. Like most autobiographical or biographical books subject to Section 632-a, its value — and our interest in publishing it — arises not from any past crime to be exploited for profit, but from the intrinsic interest of the larger life-story the author (here, a candidate for President of the United States) has to tell.

14. It was only when the first chapter of the manuscript was delivered — well after signing a contract and payment of advances — that we realized that the author's story includes past "crimes." The first chapter of the manuscript described Jackson's arrest for trespassing and resisting arrest while he was attempting to be served at a Woolworth's lunch counter. Had a statute like Section 632-a been in force in North Carolina in 1963, Jackson would not have been able to receive advances or other payments upon contracting to write a book about his experience, even a book declaring his innocence of any charges that could constitutionally have been brought against him. Had he been found guilty at that time, a statute like Section 632-a would bar him even now from being paid to write about his experience. (Indeed, if he were arrested for sitting-in tomorrow at the South African consulate in New York, we would be forced to insist that he not add that incident to the nearly-finished manuscript.) Any law that, like Section 632-a, could prohibit the commissioning of autobiographies like Jesse Jackson's (or that compels editorial decisions to delete certain sections) surely infringes the freedom of the press.

15. Simon & Schuster must consider Section 632-a in determining not only whether to publish a book, but also how to edit a book already accepted. Since the Board has held that payments for a book subject to the statute are unlawful even if the contract originally signed was not within the statute, a publisher must carefully review autobiographical and other non-fiction manuscripts for admissions or representations of acts that might constitute crimes, and either stop paying subject authors or sources (and recover any payments previously made for deposit in the Board's escrow fund) or edit the manuscript to excise any portions about the author's supposed crime.

16. Section 632-a's requirement that publishers immediately provide the Board with any contracts that might be subject to it also interferes with freedom of the press by putting publishers in an impossible situation with their writers, or with writers with whom they would like to enter into publishing agreements. What am I to do when a writer who has not been accused or convicted of any crime comes in to discuss a book in which he or she admits to any act which may in the Board's judgment be a crime

subject to the statute? Sign a publishing agreement and immediately notify the state that one of my authors may have committed a crime? Agree to compensate the author on a standard basis, knowing that the Board may direct me to breach the contract? I do not believe it is my function to be — as the Son of Sam law forces me to be — a witness against my authors, or that the government may effectively require a publisher to obtain governmental permission to compensate a category of authors and sources for certain works.

17. Finally, Section 632-a is written in such an inclusive and vague manner that we are unable to determine accurately whether any particular agreement, or manuscript, will eventually be held subject to its reach, and are compelled to steer clear of anything doubtful. In this respect, the impact of the law may be even greater than the legislature intended. Because a publisher who makes a payment that the Board later decides to have been in violation of the statute is subject to legal expenses and required reimbursement that amounts to a substantial fine, publishers are compelled to give the Son of Sam law the broadest scope possible, and to notify the Board and request the advice of a governmental body concerning any doubtful compensation whenever a book may arguably be subject to its terms. No matter when a crime occurred; or how much of a book is devoted to discussion of a crime or whether or not a court might conclude that certain conduct would not, in a criminal case under criminal standards of proof, constitute a crime; or whether we are not aware of any, or conclude that there are no victims of a crime; or whether an author discusses a trial, rather than the underlying crime, we are forced to act as if the statute applied. We are either to engage in broad self-censorship, or to make constant recourse to an administrative body to request permission to undertake the basic activities of publishing — a body which, without any clear legislative standards to guide it, determines what books can, and cannot, be effectively commissioned. I cannot believe that this regime is consistent with the First Amendment guarantee of freedom of speech and of the press.

/s/
Michael Korda

SUBSCRIPTION OMITTED

CAPTION OMITTED

AFFIDAVIT OF NICHOLAS PILEGGI

1. I am a writer and journalist and the author of *Wiseguy*, published by Simon & Schuster. I make this declaration, based on my own personal knowledge, in support of Simon & Schuster's motion for summary judgment for declaratory and injunctive relief against New York Executive Law Section 632-a, the so-called Son of Sam law, which the New York State Crime Victims Board has applied to *Wiseguy*.

Writing *Wiseguy*

2. My involvement with *Wiseguy* began in 1981, when I was contacted by Michael Korda, editor-in-chief at Simon & Schuster, to discuss a project for a book involving Henry Hill, whom he described as a low-level mobster, recently a participant in the federal Witness Protection Program, and cooperating with federal prosecutors. My own research files, compiled through thirty years as a writer particularly interested in organized crime, included information on Henry Hill, and based on my own information I believed that he was in a position to provide information concerning daily life in organized crime unlike any that had yet been made public. I told Korda that I was interested in the project, but that I wanted to check with various friends in the United States Attorney's Office in Brooklyn, as well as meet with Henry Hill and his attorney, Robert Simels, before I agreed to pursue it.

3. I contacted Ed McDonald, the chief of the federal organized crime strike force in the United States Attorney's Office in the Eastern District; Thomas Puccio, his predecessor at the strikeforce; FBI agents in the Queens, New York office; and New York City detectives who specialize in organized crime. They all confirmed that Henry Hill was in fact cooperating with federal law enforcement authorities (and that he would receive immunity for any crimes he may have committed); that he was providing valuable information, and was deeply familiar with the

workings of organized crime in New York; and that he would likely be able to provide the basis for an unusual and revealing look at organized crime quite different from the romantic view presently before the public from *The Godfather* and other such works. They each agreed to cooperate with me as much as they could should I undertake a book based on Henry Hill's story.

4. I met with Henry Hill soon thereafter, at a secret location in the midwest at a meeting set up by federal authorities. I explained to him that I would need to debrief him for literally hundreds of hours over a lengthy period. Moreover, since I would be unable to contact him (in light of the requirements of the witness protection program), he would have to call me on a daily basis as long as I was writing the book. I concluded after this meeting that Hill's story would indeed be suitable for the kind of book I wanted to write; that he was intelligent, detached, and perceptive enough to be able to provide me with the amount and detail of information I would require; and that he would be willing and able to commit the time and effort that the proposed book would require.

5. There was no question about why Henry Hill was willing to participate in what would be, for him, a time-consuming process: he needed the money. His departure from organized crime had left him without income and his obligation to federal prosecutors to be available to testify in court cases precluded most jobs. Given the substantial investment of time that I required from him, he would not have agreed to assist my work without compensation. He made this plain to me in the negotiations between us about what portion of the book's proceeds would be his.

6. The practice of compensating primary sources for books is long-established and common in publishing — ' all ghost-written autobiographies are examples — and also indispensable: such books could not be written if such compensation were prohibited. The practice is *not* limited to books about criminals, and payments to primary sources are made to purchase time and effort, not to reward or exploit crimes or crime victims. For example, like *Wiseguy*, my first non-fiction book, *Blye, Private Eye*, the story of a real private detective in New York City, could not have been written without the subject spending literally hundreds of

hours with me, taking me around to his accustomed haunts, meeting his friends and family. Since hours devoted to working with me are hours spent not otherwise remuneratively employed, it was necessary to compensate that subject, just as it was necessary to compensate Hill for *Wiseguy*.

7. *Wiseguy* was written with precisely the extensive investment of Henry Hill's time that I had expected. Over a period of more than two years, we talked at length virtually every single day, with not more than an occasional Sunday or holiday skipped. We spent more than three hundred hours together; my notes of conversations with Henry occupy more than six linear file feet. The book could not have been written without this intense involvement; it would have lacked the immediacy and the bite of ugly mob reality that led, in my judgment, to its success.

8. Henry Hill had no right of review or approval, or right to edit, my manuscript of *Wiseguy*.

Section 632-a Interferes With the Creation of Certain Books

9. Although the Board's final order concerning *Wiseguy* did not find that I was a representative of Hill, or subject my royalties or advances to operation of the Son of Sam law, its prior correspondence in this matter suggested that I was indeed subject to it. At the start of its investigation, the Board directed me to suspend any payments "potentially covered" by the law, and appeared to direct Simon & Schuster to suspend payment to me as well. *See* McNamara Aff't exhibit 2 (annexed exhibits C, D). The possibility that I would be penalized, and give up income for three years of work, for having written a book that required payment to a primary source like Henry Hill, was extremely disturbing, and made me unwilling to pursue similar projects because of the risk to my income.

10. Section 632-a has further severely interfered with my freedom to write and publish because of its prohibition on the payment of primary sources. I have had to reject three separate projects which I would have undertaken or pursued with a view to undertaking them, because Section

632-a has effectively prohibited me from embarking on any projects which involve primary sources arguably subject to the Act.

11. One such project involves an ex-New York City Police detective, who was bounced out of the police department for corruption and ended up working in organized crime for the man who corrupted him. After serving some time in prison, he is now out, and filled with remorse. He would like me to help him tell his story: to name names, to write about what happened to him, and how easy it is for the mob to corrupt certain police officers. But I cannot promise this man that he will be paid for this book on a timely basis; and, in his present economic situation, he will not devote the hundreds of hours with me that this book would require, unless he can be paid on an ongoing basis, which the Son of Sam law purports to forbid.

12. Another project I have been compelled to forgo is the story of another former policeman. After being arrested for armed robbery and then serving time as an inmate in a state prison, he began working as an undercover agent and has broken eight homicides for prosecutors. Again, this kind of project is effectively blocked from the outset. Neither I nor a publisher nor a literary agent can promise him any on-going compensation. If he cannot be certain of being paid, he will not provide the investment of time necessary for the book.

/s/
Nicholas Pileggi

SUBSCRIPTION OMITTED

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AFFIDAVIT OF STERLING LORD

Sterling Lord, being duly sworn, deposes and says:

1. I am a literary agent, and president of Sterling Lord Literistic, a literary agency in New York (previously known as the Sterling Lord Agency). Since 1953, I have represented hundreds of authors in negotiating agreements for many hundreds of books, films, and plays. Among the authors I have represented are Pierre Salinger, Edward M. Kennedy, Nicholas Pileggi, David Wise, and Art Buchwald. Among the books for which I have negotiated publishing agreements are Joe McGinnis' *Fatal Vision*, Jimmy Breslin's *The Gang That Couldn't Shoot Straight*, Bill Vieck's *Vieck as in Wreck*, and Doris Kearns Goodwin's *The Fitzgeralds and the Kennedys*. I have also been Treasurer of the Society of Authors' Representatives for thirteen years.

2. I represent Nicholas Pileggi and Henry Hill in connection with Pileggi's non-fiction work *Wiseguy*. I make this affidavit in support of Simon & Schuster's motion seeking summary judgment for declaratory and injunctive relief against New York Executive Law Section 632-a, the so-called Son of Sam law.

The Creation of *Wiseguy*

3. I negotiated an agreement in August 1981 ("the August Agreement") between Pileggi, Hill, and the Sterling Lord Agency as agent for them both, concerning the creation of a book-length manuscript by Pileggi that would use Hill's story as the basis for a study of the inner working of organized crime. (A copy of that agreement was annexed as Exhibit A to the New York State Crime Victim Board's May 27, 1987 Proposed Determination and Order. The Proposed Determination and Order and its annexed exhibits are attached below as Exhibit 2.) The August Agreement provided for dividing any author's payments (encompassing both advances and royalties) between Pileggi and Hill

according to a specified split, after deduction of standard literary agent's fees (generally of 10%). It also provided, as is customary, that publishers and other licensees and grantees of rights in the book would pay all monies in the first instance to the Sterling Lord Agency. The percentage of proceeds to be paid to Hill for his time, effort, and exclusive cooperation was well within the range that other non-author subjects (primary sources) have received in similar agreements in my experience. Based on the vigorous negotiating positions taken by Hill's attorney, Robert Simels, on Hill's behalf, there was no question but that Hill viewed the compensation that he would earn, including an advance as soon as a publishing agreement with a publisher was secured, as the primary inducement to his cooperation with Pileggi.

4. An agreement ("the Publishing Agreement") between Pileggi and Hill and Simon & Schuster for a book about organized crime was signed on or about September 1, 1981. (A copy of that agreement is annexed as Exhibit A to Exhibit 2, below.)

The Impact of Section 632-a

5. The Crime Victims Board wrote Simon & Schuster in January 1986, asking it to suspend all payments due under contracts for *Wiseguy*. (*See* annexed exhibit C to exhibit 2, below.) Since that time, pursuant to the Board's direction, Simon & Schuster has withheld all payments due the Sterling Lord Agency on behalf of Hill under the Publishing Agreement.

6. Under standard industry practice, a publisher ordinarily agrees to pay any sums due the authors to the agent, and the literary agent's sole compensation is the percentage fee (usually 10%) that the agent-author agreement permits the agent to deduct from the authors' payments.

7. The agreements concerning *Wiseguy* conformed to this standard pattern. Accordingly, as a consequence of Simon & Schuster's inability to pay Hill pursuant to the Board's direction on January 1986, reaffirmed in its June 1987 Order, the Sterling Lord Agency has not been properly compensated for its substantial work in connection with *Wiseguy*. The portion of our fee to be derived from payments due Henry Hill on or after

January 1986 has been held in escrow by Simon & Schuster, together with the payments due Hill himself.

8. As this experience demonstrates, Section 632-a precludes my agency and other agents generally from being paid for work for books which may be subject to its terms. The law, moreover, is not limited to payments on behalf of formally accused or convicted persons; the Board directed Simon & Schuster to suspend *all* "payments on *any* contracts which *may* be *potentially* covered" by the law as soon as a publisher learns of an agreement that it believes may be subject to the law. *See* annexed exhibit C to exhibit 2, below (emphasis added). And this direction to publishers to cease such payments was issued before any due process was accorded — that is, without waiting for the issuance of final administrative orders after hearings and full review of the relevant agreements and of books or manuscripts that may be covered.

9. Because Section 632-a prohibits publishers from paying literary agents for work in connection with works potentially within its reach, as a practical matter it forecloses our involvement in any project to which it may apply. My agency would not agree to undertake any project that would arguably fall within its terms and for which we could not be paid pursuant to our standard agreements. It makes no economic sense for us to devote substantial resources (time, legal fees, and other out-of-pocket expenses) to projects for which we may not achieve normal recompense. Based on my familiarity with other literary agents and the publishing industry generally, I believe that Section 632-a would deter other literary agents as well from representing authors for works that might be subject to its terms.

10. Literary agents like myself frequently spawn discussions leading to agreements to publish works that would not otherwise be created. By making a literary agent's qualification for compensation for the time, effort, and expense involved in certain projects doubtful, contingent on the Board's reaction to any work, the existence of any potential victims, and the expenditure of legal expenses and additional time to deal with the Board, Section 632-a introduces a fatally unacceptable level of complexity in such projects. Section 632-a will therefore deter and effectively abort

the creation and publication of some non-fiction works that would otherwise be created and published were Section 632-a not in effect.

11. New York is the primary location for literary agents and publishers. Section 632-a thus has an extremely significant effect in impeding and preventing non-fiction books from publication and distribution throughout the United States and abroad.

12. One of the first manuscripts that I sold to a publisher was a frank autobiographical book about a life of burglary, *Next Time Is For Life*, written by Paul Warren (a pseudonym) and published in 1953. The very first sentence of this unusual and valuable book — "The first thing I remember stealing was a dollar bill I picked up from the floor of a Chicago grocery when I was thirteen" — makes plain that *Next Time Is For Life* would not have been published had the Son-of-Sam law been in effect at that time and place. Even if the author would nonetheless have been willing to spend the time writing it, neither I nor other literary agents would have been willing to undertake the effort to try to interest a publisher in an unusual book by an unknown writer if our fee were in doubt.

13. I am aware of the Board's October 26, 1987 final order concerning Jean Harris' book *Stranger in Two Worlds* in which the Board granted the request of The Lantz Office, Ms. Harris' literary agent, to retain its commission. For at least two reasons, this order does not remove the severe deterrent that Section 632-a poses to the participation of literary agents in projects potentially subject to Section 632-a. First, the Board twice noted that Dr. Herman Tarnover's family, the only potential claimant under the law, had expressly agreed to the grant of administrative relief to the literary agent. This unique factor renders the Board's exercise of discretionary relief to The Lantz Office pursuant to Section 632-a (8) of little if any future benefit to literary agents.

14. In addition, as an agent, I have a fiduciary obligation to my clients to inform them of the impact Section 632-a will have on their compensation. Based on my more than three decades in business, I have no doubt that clients, when informed that they will not be paid for a book

or other project for at least five years, will for that reason simply decline to proceed with proposed projects potentially covered by Section 632-a. Whether or not this office or literary agents generally might may eventually be compensated for work undertaken after uncertain delays and the expenditure of substantial legal expenses is a moot question, when the books potentially subject to the law will not be written in the first place.

15. Writers do not write books, and subjects of books whose cooperation is essential do not provide substantial assistance to authors, without enforceable promises of payment, including payment of advances, which are standard payments made before a book is written. Literary agents do not play their role in putting together book deals without enforceable promises of payment for significant services rendered. Advances are a central part of the compensation arrangements generally used in the publishing industry, because people working on books need something to live on while writing. Without the payment of advances, many books now being written would not be written at all, or certainly not with the time-consuming care that a good book requires. By effectively precluding payments to authors, subjects, and literary agents for an indeterminate period of time of at least five years, the Son of Sam law necessarily inhibits, deters, and stifles the publication of books potentially within its reach.

/s/

Sterling Lord

SUBSCRIPTION OMITTED

CAPTION OMITTED

AFFIDAVIT OF GERALD E. HOLLINGSWORTH

GERALD E. HOLLINGSWORTH, being duly sworn, deposes and says:

1. I am Vice President and General Counsel of Random House, Inc. I have held these positions for the past fifteen years. I submit this affidavit, based on personal knowledge, in support of Simon & Schuster's motion for summary judgment and an order declaring New York Executive Law Section 632-a, the so-called Son of Sam law, unconstitutional under the First Amendment.

2. Random House is a major trade and mass market publisher, based in New York City. Among its well-known publishing imprints are Random House, Knopf, Pantheon, Vintage, Ballantine, and Fawcett. Random House is in the business of regularly publishing books within the class of those potentially reached by Section 632-a. Among books Random House has published in the past that would have been potentially subject to Section 632-a or similar statutes in other jurisdictions, had they been in effect, are *Witness* by Whitaker Chambers, *The Autobiography of Malcolm X*, and *The Essential Lenny Bruce*.

The adverse impact of Section 632-a on book publishing

3. As General Counsel of Random House, I am called upon to give legal advice concerning the application of various laws to our publishing activities. Among these laws is Section 632-a. For the reasons cogently presented in Paragraph 17 of Michael Korda's affidavit, which I adopt as my own, I am compelled to give Section 632-a the broadest conceivable interpretation in rendering advice to my client.

4. Based on my experience in the publishing industry, I also agree with, and hereby incorporate, Michael Korda's observations and conclusions in Paragraphs 9-16 concerning the inhibiting and deterring

effect Section 632-a will have on the writing and publishing of books. Because writers do not write books without secure promises of timely payments, including advances, and literary agents will not represent writers for projects for which they will not be properly paid, and publishers (such as Random House) are loath to incur the risk of substantial monetary penalties, fewer books potentially subject to Section 632-a will be written and published than if it were not the law. Moreover, some books that might have been potentially subject to it will be edited to avoid its application, thereby depriving the reading public of material to which they would otherwise have had access.

5. Had Section 632-a or similar statutes been in effect at the time publishing agreements were being discussed for the books listed above by Whitaker Chambers, Malcolm X, and Lenny Bruce, in my judgment Random House would not have been able to publish those books at the times and in the manner published. Contracts would have been required to be submitted to the Board; advances and royalties could not have been promised or made; authors might well have determined not to write the books at all, or to write them to avoid application of Section 632-a, or to publish them in other states, through publishers unlikely to achieve the sales of a major publisher like Random House, to avoid the application of Section 632-a.

Section 632-a is underinclusive

6. Although the Board has not yet determined that any book published by Random House is subject to Section 632-a, our experience with Jack Henry Abbott's book *In the Belly of the Beast* instructively shows the statute's underinclusiveness.

7. Random House published *In the Belly of the Beast* prior to Jack Abbott's murder of Richard Adan. Accordingly, under its clear terms, the statute did not apply to the payments for the book and could not assist Mr. Adan's estate and heirs. (Nor has the Board ever suggested that the book was subject to the law for any other reason.) Thus, this tragic event demonstrates how the content-based application provided for in the statute results in an underinclusive statute whose means are not closely fit to

advance its ends. Notwithstanding the evident merit to a recovery by Mr. Adan's estate, the Son of Sam law is not drafted to achieve it.

8. It is also noteworthy that the other non-content based and non-press targeted remedies provided for in New York law permitted the estate to receive Mr. Abbott's payments from Random House. The estate filed an ordinary tort suit and, using the prejudgment remedies already provided in the Civil Practice Law and Rules, was able to attach royalty payments due from Random House to Mr. Abbott. At the successful conclusion of the lawsuit, armed with a judgment, the estate was able to execute on the attached assets.

9. Finally, I want to stress another important point that the Abbott-Adan case illuminates: the limited, carefully defined objection that Random House and publishers generally have to the Son of Sam law. We do not contend that crime victims who obtain tort judgments are prohibited by the First Amendment from obtaining satisfaction from the proceeds of expressive activity. To the contrary, we see no basis for contending that those assets should be treated differently from any other assets that can be used to satisfy legal judgments under otherwise fair and constitutional legislation. The defects in Section 632-a are that it applies only on the basis of impermissible content-based and speaker-based distinctions, that it targets earnings from expressive activity for special adverse treatment, and that as a result of its design it places substantial and unjustified burdens on expressive activity.

/s/
Gerald E. Hollingsworth

SUBSCRIPTION OMITTED

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AFFIDAVIT OF JAN F. CONSTANTINE

JAN F. CONSTANTINE, an attorney duly admitted to practice under the laws of the State of New York, being duly sworn, deposes and says:

1. I am Associate General Counsel of Macmillan, Inc. ("Macmillan"). Macmillan, a prominent book publisher since 1869, is one of the largest publishers of textbooks and children's books in the United States. Through its various divisions — Macmillan Publishing Company, The Free Press, Collier Books, Charles Scribner and Sons, Atheneum, Rawson Associates, G.K. Hall, Michie, Bennett & McKnight and Glencoe — Macmillan publishes books on a variety of topics for the general public as well as schools (elementary, college and graduate) and professions. I make this declaration in support of Simon & Schuster, Inc's. ("Simon & Schuster") motion for summary judgment in the above-captioned action.

2. Since February, 1986, I have been representing Macmillan in a proceeding before the New York State Crime Victims Board ("the Board") regarding Macmillan's publication of a book by Jean Harris entitled *Stranger in Two Worlds*. Based on my own dealings with the Board in this matter, and my dealings with the Statute in a range of other matters, I concur with Simon & Schuster's position as to the unconstitutionality of N.Y. Executive Law Section 632-a (hereinafter sometimes referred to as "the Statute") as set forth in its complaint and papers submitted in support of the instant motion. In particular, I agree with the points made by Simon & Schuster's editor-in-chief Michael Korda in paragraphs 9-17 of his declaration concerning the ways in which Section 632-a detrimentally interferes with the unfettered publication of works protected by the First Amendment and will result in fewer books being written and published, and changes in books that *are* published.

3. In my role as an attorney for Macmillan, I have had first-hand experience with the way in which Section 632-a interferes with freedom of speech and of the press. I have been, and will be in the future, called on

to make judgments concerning whether a given proposed contract (and the book it represents) is within or without the Statute. But the Statute is so broadly and yet vaguely written, and the effective penalties for its violation so severe, that there is no way to advise my client except to err in every case on the side of the Statute's applicability. Thus, *either* we will have to provide contracts and manuscripts for review by government officials, who will then make content-based determinations as to the Statute's coverage, *or* we will have to forego a given project, or alter it so that the book contracted for will not be covered. Of course, it is unprecedented for a law to effectively require publishers to submit contracts and manuscripts to government officials for their review.

4. My experience with respect to the Harris book *Stranger in Two Worlds* is illustrative of the overbroad reach of the Statute, the way it can pressure publishers to insist on alterations in book content, the impossibility of a publisher's determining for itself whether a book is covered without lengthy legal wrangling with the Board, and the delays and uncertainties the Statute poses to promising and providing payments to writers.

5. In January 1985, Robert Stewart, an editor with Macmillan, was approached by The Lantz Office ("Lantz") as author's agent with a proposal for a book to be written by Jean Harris about prison reform. Ms. Harris, who in 1981 had been convicted of second degree murder in the killing of Herman Tarnower originator of the Scarsdale Diet, is presently serving a term of fifteen (15) years to life at Bedford Hill Correctional Facility. On March 19, 1985, Macmillan and Jean Harris entered into a publishing agreement. At that time, the book consisted only of a loosely organized outline and some 100 sample pages about prison reform. Initially, the project as envisioned by Macmillan and Ms. Harris was not going to discuss the crime or her trial and the original outline made no mention of these topics. In accordance with the agreement, Macmillan paid Lantz, Ms. Harris' agent, $50,000 upon execution of the Agreement; another $50,000 advance was to be paid upon acceptance of a final manuscript.

6. In late 1985, as the manuscript evolved into its final form, a question was first raised at Macmillan as to whether the Board might determine that contents of the book fell within New York Executive Law 632-a, even though the principal subject of the book remained prison life. After consulting with Lantz and Ms. Harris, Macmillan felt that it had no choice except to submit a copy of the Agreement and the manuscript to the Board in accordance with the Statute and advise the Board that no further monies would be paid to Ms. Harris until a final determination was made as to the Statute's applicability. It did so by letter of February 11, 1986.

7. The book, *Stranger in two Worlds*, was published in May 1986. As finally written and published, the book contained two chapters that did mention Ms. Harris' crime and her trial. These chapters quote extensively from the court transcripts of the trial and constitute only a small portion of the book (*i.e.* less than 20%). The largest section of the book describes Ms. Harris' life in prison. The book received favorable reviews, made the New York Times bestseller list, and Ms. Harris was commended by the reviewers for both her writing ability and her insight into the workings of the prison system.

8. On July 28, 1986, the Board issued a Proposed Determination and Order finding, *inter alia*, that two chapters of the book (containing, for the most part, verbatim trial testimony) fell within the Statute and that Macmillan should not have paid over to Jean Harris the $50,000 advance on signing prior to a ruling from the Board (even though the parties did not contract for a book that appeared to be within the Statute.) The Board ordered that in the event that Ms. Harris did not pay over to the Board the $45,000 advance previously received ($50,000 minus the Lantz commission), Macmillan would be obligated to do so. The Board also ordered Macmillan to submit to the Board "any future or present contract between it and any other person or entity concerning Jean Harris or the work *Stranger in Two Worlds*".

9. Believing that the Board had misconstrued the Statute and exceeded its statutory mandate, Macmillan and the other interested parties, including Lantz and The Children of Bedford, Inc., Ms. Harris' assignee

of all moneys earned under the agreement, requested a hearing. Hearings were held before a member of the Board on October 2, 1986; November 14, 1986; February 10, 1987 and June 3, 1987.

10. Thereafter, on October 26, 1987, the Board upheld the proposed order and determination and issued its Final Determination and Order requiring all moneys earned under the agreement to be paid over to the Board in accordance with the Statute. The Board rejected Macmillan's contention that the failure to submit the agreement and the payment of the initial advance should not be considered violative of the Statute since, at the time payment was made, the book as conceived was not within the Statute. The Board affirmed the relief against Macmillan as detailed above in paragraph 8 above. The Board also held that it had no jurisdiction to consider the parties' constitutional challenge. Macmillan presently intends to appeal the final determination in New York State Court.

11. Section 632-a has had and continues to have a substantial inhibiting effect on Macmillan's conduct of its publishing business and First Amendment rights. The statute, as it now stands, precludes Macmillan from entering into any publishing agreements with persons who could arguably be subject to its broad scope for books whose subject may involve discussion of their crimes, since it hinders the publisher's ability to compensate such authors who have a story to tell. Authors who cannot be assured of being compensated will not enter into publishing agreements.

12. Moreover, as the Jean Harris situation illustrates, the Board apparently goes even further, by mandating the submission of a publishing agreement *about* an "accused" or "convicted" criminal under the Statute, regardless of the author. Thus, the Board has directed submission of any contracts "concerning Jean Harris", written by Ms. Harris or anyone else on any subject matter whatsoever, whether or not the book contains Ms. Harris' own reenactment of the crime for which she was convicted or an expression of Ms. Harris' thoughts, feelings, opinions or emotions about the crime. *See* paragraph 8 *supra*.

13. Based on Macmillan's experience in the Jean Harris case and other matters, and the vagueness of the statutory language, in advising

Macmillan as to the legal consequences of entering into publishing agreements with authors for works dealing with the subject of crime, I would have to oppose such a project and recommend rejection of the agreement if the work even remotely could be considered to fall within the Statute. As a result, the statute will necessarily result in some books not being published. Of course, such authors will be willing to spend the time and effort to undertake to write potentially covered books without a secure promise of being compensated in less than five years in the first instance, the Statute necessarily will result in some books not even being written.

14. In sum, for the reasons set forth here and in the affidavit of Michael Korda, Section 632-a directly and substantially burdens the right of publishers to take necessary steps to publish books that, in their editorial judgment unfettered by the operation of Section 632-a, they would choose to publish. Accordingly, I respectfully urge this Court to issue a judgment declaring that the Statute violates the First Amendment of the Constitution and enjoining its enforcement by the Board.

/s/

/s/

Jan Constantine

SUBSCRIPTION OMITTED

CAPTION OMITTED

DECLARATION OF JASON McMANUS

Jason McManus, under penalty of perjury declares:

1. I am Editor-in-Chief of Time Incorporated, publisher of TIME, FORTUNE, SPORTS ILLUSTRATED, PEOPLE, MONEY, and LIFE Magazines. I make this declaration in support of Simon & Schuster's motion for a declaration that Section 632-a of the New York Executive Law, the so-called Son of Sam law, abridges the freedom of speech and of the press guaranteed in the First Amendment.

2. Section 632-a presents serious concerns to publishers to the extent that it would prevent a publisher from paying a fee to the author of an article which relates the author's thoughts, feelings, opinions or emotions relating to the author's commission of a crime, even if the crime was never prosecuted. It is also a serious concern that the statute would apply to accounts of crimes in which the public has great interest committed by persons of political or social significance such as, for example, individuals involved in acts of civil disobedience, civil rights protests or matters of such political significance as the Watergate or Iran-contra scandals. A statute which significantly interferes with the discretion of editors in contracting with any individuals for written accounts of their experiences has the ultimate effect of reducing the public's access to newsworthy material. It is contrary to the First Amendment goal of permitting widespread debate about matters of public importance.

3. Although I am advised that §632-a has most frequently been invoked against book publishers, such as Simon & Schuster, its scope clearly involves magazine publishers just as substantially. While our regular reporting of alleged criminal activity of course involves no contracts with or payments to alleged criminals, there could arise situations where a full account of the criminal activity or, often more significant, the perspective of the alleged criminal concerning his motivation or the background of his activity can only be obtained by dealing with the

individual most directly involved. However much one may disapprove of their actions, it is in society's interest that the views, for example, of John Dean or John Ehrlichman on the Watergate scandal; of Ivan Boesky or Martin Siegel on insider trading; of Oliver North or John Poindexter (if accused) on the Iran-Contra affair; of Stanley Friedman on political corruption; and even of Bernhard Goetz on the criminal justice system be made available to the public, should these persons be willing to discuss these matters. Any law that prohibits them from being compensated for their efforts to communicate information or their ideas, or that obstructs publishers, of magazines or books, from encouraging them to make available as much information as possible, is ultimately harmful to our society and is the kind of constraint I would have thought would not be permitted by the First Amendment to the Constitution.

4. I have also been advised that §632-a includes in its sweep not merely convicted criminals, but any person who has "admitted the commission of a crime for which such person is not prosecuted." This would have the unfortunate effect of turning our editors into lawyers, if not judges, in order to determine whether a person who wrote about his civil rights protest or his international arms dealing, for example, was admitting the commission of a crime. This application would have the effect of causing our editors to steer away from publishing discussions of controversial areas, or withhold payment due such a writer, or face the risk of being found to have violated this law themselves. None of these alternatives should be acceptable. This application of the law would promote a self-censorship that is contrary to the best interests of our society and is, again, something I would have believed to be contrary to the First Amendment.

5. It is my opinion, therefore, that §632-a of the Executive Law interferes with the freedom of our magazine editors to publish and to make editorial decisions concerning information they will present to the public, to the ultimate harm of our free society and contrary to the principles of the First Amendment.

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 11, 1987.

/s/
Jason McManus

CAPTION OMITTED

AFFIDAVIT OF PHYLLIS E. GRANN

Phyllis E. Grann, under penalty of perjury, declares:

1. I am Chief Executive Officer of The Putnam Publishing Group, Inc. and President of G.P. Putnam's Sons ("Putnam"). For nearly 150 years Putnam has published a broad range of general interest books, including biographies, autobiographies and social commentaries by authors as diverse as Washington Irving, Theodore Roosevelt, Abbie Hoffman and Armand Hammer. I make this affidavit in support of Simon & Schuster's motion seeking summary judgment for declaratory and injunctive relief against New York Executive Law Section 632-a, the Son-of-Sam law.

2. The New York Son-of-Sam law operates as a prior restraint by inhibiting or preventing the publication of books solely on the basis of content. Because of the breadth of the statute and the administrative and financial burdens imposed by it, publishers are forced to censor a whole category of books — those in which we contract directly with a "person convicted of a crime" (or his agent or representatives) and which depict or enact crimes. We are forced to decide what can be said, who can say it and how it can be said, often at a moment in the publication process that is premature, that is when the book is first presented for consideration and before it is fully written.

3. I believe that certain books will *never* be written because of the statute; someone who is "convicted of a crime" within the meaning of the statute is unlikely to spend the time and effort to write a book if he does not get paid. And, even if the book is written or a publication outline prepared, such books may never be published because of the statute.

4. At this point in time, Putnam would probably not enter into a publishing agreement that it knows is subject to the statute. For example, Putnam would not enter into a publishing agreement with Bernard Goetz, Robert Chambers (the "preppy" murder), Hedda Nussbaum (murder/abuse)

or Cheryl Pierson (incest/murder), even though their stories deal with topics of legitimate and overwhelming public interest. The public has a right to know — and a need to know — the circumstances and thoughts behind the headlines. And, although it may be distasteful and unseemly for "criminals" to receive money for their stories, the fact remains that their stories may never be fully known or understood if they are not paid. One may not like the fact that Jeffrey MacDonald was entitled to receive income from the sale of Joe McGinniss' book FATAL VISION, which was published by Putnam. But there is certainly no doubt that the book contains valuable insights into crime and its motivation which would have been unavailable without Joe McGinniss' promise to pay royalties to MacDonald.

5. Had the Son-of-Sam law been in existence years ago, several notable titles published by Putnam might never have seen the light of day. Abbie Hoffman's autobiography, SOON TO BE A MAJOR MOTION PICTURE, and his account of life on the lam, SQUARE DANCING IN THE ICE AGE, might never have been published. A similar fate might have met Robert Garwood's account of his years as a prisoner of war, CONVERSATIONS WITH THE ENEMY, as well as Ira Pecznick's account of his life in the Mafia, TO DROP A DIME, which was co-written with the noted journalist Paul Hoffman.

6. The ambiguities in the statute create additional problems. They force us to restrict what we publish in ways that may be completely unintended. It is difficult if not impossible to know precisely which crimes are covered. Who is a person convicted of a crime? Who are his agents? His representatives? What if the book is not about the crime but is about a different topic? What if the book mentions the crime in passing? In doubtful cases we may be forced to pass over perfectly acceptable books because of our concerns about the Son-of-Sam law. For example, if the New York statute applied, would it mean that Armand Hammer would have to forfeit his proceeds from WITNESS TO HISTORY because he discusses his Watergate conviction? Would it mean that Abbie Hoffman could not be paid for his autobiography or that a person who has received full immunity from prosecution would be required to forfeit his income

from publishing when he is not prevented from making a living in any other way?

7. Quite apart from the substantive law, the administrative and financial burdens imposed by the statute operate as a tremendous disincentive to publish certain types of books. Those burdens are so severe that in doubtful cases we are forced to err on the side of caution and to reject a manuscript or edit out questionable passages. All things being equal, if we had to choose between two books, we would choose the one without the headaches associated with the Son-of-Sam law. At least one of the factors in our decision not to accept MAYFLOWER MADAM for publication was the inconvenience, difficulty and expense of dealing with the New York State Crime Victims Board. Our caution in the editorial process is illustrated by a recent book by a celebrity who had been convicted of a crime. We felt compelled to severely restrict any discussion of the crime in order to avoid the snare of another state's Son-of-Sam law. Full treatment of the crime would have added credibility to the main subject of the book and increased significantly the book's general interest. However, we and the author did not wish to run the risk of being caught up in the bureaucratic maze of the Son-of-Sam procedures.

8. For the reasons stated above, I do not believe that the New York Son-of-Sam law is consistent with the First Amendment.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 15th day of December, 1987.

/s/

Phyllis E. Grann

EXHIBIT 1

A COPY OF *WISEGUY*, WRITTEN BY NICHOLAS PILEGGI, PUBLISHED BY SIMON & SCHUSTER IN 1986, HAS BEEN LODGED WITH THE CLERK OF THE COURT

Before the

STATE OF NEW YORK CRIME VICTIMS BOARD

In the Matter of a Contract

Between

HENRY HILL and **NICHOLAS PILEGGI**

and

SIMON & SCHUSTER

NOTICE OF PROPOSED DETERMINATION AND ORDER

PLEASE TAKE NOTICE that the Crime Victims Board, State of New York has issued pursuant to Executive Law 632-a and 9 NYCRR 526.1, the Proposed Determination and Order affixed hereto in the above-captioned matter.

This Proposed Determination and Order will become final within thirty (30) days of the date of service of this notice unless a hearing is requested in writing by an interested party. If you disagree with the Proposed Determination and/or Order, you have the right to a hearing before the Crime Victims Board prior to a final determination in this matter. A request for a hearing must be made in writing addressed to: Chairman, New York State Crime Victims Board, 97 Central Avenue, Albany, New York 12206. The request should state the reason for your disagreement with the Proposed Determination and/or Order, and your interest in the matter.

Dated: May 27th, 1987
Albany, New York

Yours very truly,

/s/

Lorraine Felegy, Counsel
New York State
Crime Victims Board

Before the

STATE OF NEW YORK CRIME VICTIMS BOARD

In the Matter of a Contract

Between

HENRY HILL and **NICHOLAS PILEGGI**

and

SIMON & SCHUSTER

PROPOSED DETERMINATION AND ORDER

Findings of Fact

1. On or about April 27, 1980 Henry Hill was arrested in Nassau County and was charged in six indictments numbered 50764-50769 with Conspiracy to Sell Drugs.

2. In May 1980, Henry Hill entered into the federal witness protection program in exchange for his agreement that he would cooperate with various law enforcement agencies.

3. In the interest of justice the six indictments against Henry Hill were dismissed.

4. Simon & Schuster is a for-profit corporation doing business in New York State with offices located in New York City and is in the business of publishing books.

5. The Sterling Lord Agency is a literary agency with offices at 660 Madison Avenue in New York City.

6. On September 1, 1981 Simon & Schuster and Henry Hill and Nicholas Pileggi entered into a Contract known as a Publishing Agreement (hereinafter the "Contract"), a copy of which is annexed hereto as Exhibit "A".

7. Under the terms of the Contract, Henry Hill and Nicholas Pileggi (jointly referred to as "Author" in the Contract), sold exclusive publishing rights to a work entitled *Wiseguy*, to be authored by Henry Hill and Vincent Pileggi, to Simon & Schuster.

8. The Contract further provides for the payment of monies by Simon & Schuster to Author, to be divided between Henry Hill and Nicholas Pileggi, pursuant to a separate agreement.

9. On August 21, 1981 Henry Hill and Nicholas Pileggi entered into an agreement (hereinafter "Agreement") whereby all monies received in the sale of a book length manuscript concerning Hill's life, to be prepared cooperatively by Hill and Pileggi were to be divided between Henry Hill and Nicholas Pileggi according to specified percentages for printed page and performance rights. The Agreement further provided that the Sterling Lord Agency was to receive and retain ten percent (10%) of any and all monies payable to Henry Hill and Nicholas Pileggi in respect to said work. The Agreement is hereto annexed as Exhibit "B".

10. The work *Wiseguy* was published in 1985.

11. The work *Wiseguy* is Henry Hill's life story from 1955 when he first became involved with organized crime until May 1985 when he joined the Federal Witness Protection Program. It is a veritable catalog of crimes in which Henry Hill admits to the commission of various crimes and expresses his feelings, opinions or emotions regarding such crimes.

12. The Crime Victims Board first became aware of the possibility of a Contract between Henry Hill and Simon & Schuster in January, 1986.

13. On January 31, 1986 the Crime Victims Board by its Counsel sent certified letters to Simon & Schuster and Nicholas Pileggi requesting that a copy of the Contract and certain other information be turned over to the Crime Victims Board pursuant to Executive Law § 632-a (hereby annexed as Exhibits "C" and "D").

14. On May 27, 1986 the Crime Victims Board received a letter from Simon & Schuster, signed by John C. Bender, Group Vice President and General Counsel, (annexed hereto as Exhibit "E", which enclosed a copy of the Contract (see Exhibit "A"), a copy of the Agreement between Henry Hill and Nicholas Pileggi (see Exhibit "B") and copies of two letter amendments to the Contract annexed hereto as Exhibits "F" and "G".

15. Based on the correspondence received on May 27, 1986 from Simon & Schuster (See Exhibit "E"), payments in the amount of $96,250.00 were made to the Sterling Lord Agency for the account of Henry Hill.

16. At present Simon & Schuster is holding approximately $27,958.00 due to be paid to Henry Hill pursuant to the Agreement.

OPINION AND ORDER

1. The Contract between Henry Hill and Nicholas Pileggi and Simon & Schuster, dated September 1, 1981 is of the type regulated by Executive Law §632-a. As such a copy of such Contract should have been turned over to the Crime Victims Board in 1981 at the time of execution for the Board's determination as to whether it came within the ambit of the Statute. At the very least, a copy of the Contract should have been turned over to the Board prior to October 10, 1984 the date of the first payment by Simon & Schuster to Sterling Lord Agency for the account of Henry Hill. The statute and rules of the Crime Victims Board provide ample means by which a publisher may obtain a determination from the Board regarding the applicability of Executive Law §632-a to a particular Contract. These procedures include a request for an Adjudicatory Ruling (9NYCRR §525.19) by which a publisher may obtain a binding ruling based upon an actual or hypothetical set of facts, a request for an advisory opinion of Counsel based upon a stipulated set of facts or circumstances, or a request for a formal Proposed Determination and Order based on submission of an actual Contract and related information (9NYCRR §526.1). By failing to turn over a copy of the Contract to the Board and

by paying $96,250 to Henry Hill without seeking any determination from the Board, Simon & Schuster violated Executive Law §632-a.

2. The Board has reviewed the book entitled *Wiseguy*, authored by Henry Hill and Nicholas Pileggi pursuant to the Contract and published by Simon & Schuster, in 1985, and is of the opinion that it contains thoughts, feelings, opinions and emotions regarding crimes committed by Henry Hill as well as his admission to involvement in such crimes.

3. Nicholas Pileggi is a co-author and is not a representative of Henry Hill within the meaning of Executive Law §632-a(1) and as such no monies due or owing him are subject to the mandates of Executive Law §632-a.

4. As the Board is of the opinion that the Contract as performed is of the type described in and governed by Executive Law §632-a, all monies paid to Henry Hill or his representatives under the Contract must be turned over to the Crime Victims Board to be held in escrow for the victims of crimes committed by Henry Hill.

5. The Sterling Lord Agency as an agent of Henry Hill is deemed a representative under Executive Law Sections 621(6) and 632-a, and must also turn over any monies received or to be received under the Contract on account of Henry Hill, to the Crime Victims Board. However, the Sterling Lord Agency may, pursuant to Executive Law §632-a(8) make application to the Board for payment of necessary expenses for the production of monies paid into the escrow account to be established by the Board in this case.

Accordingly, pursuant to Executive Law §632-a it is hereby

ORDERED that Henry Hill pay over to the Crime Victims Board all monies received under the aforementioned Contract, including but not limited to the payments already received under the Contract from the Sterling Lord Agency in the amount of $96,250 (less any agent fees paid to the Sterling Lord Agency under the Agreement between Henry Hill and Nicholas Pileggi), plus any interest which has accrued on such monies

from the date of receipt, along with any and all future monies due him under the Contract, such monies to be deposited in an escrow account for the benefit of and payable to any victims or the legal representative of any victim of the crimes which he admits to committing;

ORDERED that in the event Henry Hill fails to turn over to the Board monies paid to him in the amount of $96,250.00 (minus agent fees paid to Sterling Lord Agency) plus interest within thirty (30) days after issuance of a Final Determination and Order of the Board in this matter, that Simon & Schuster, shall turn over to the Board the total of monies it wrongfully distributed to Henry Hill through the Sterling Lord Agency, in the amount of at least $96,250 (minus agent fees paid to Sterling Lord Agency) plus interest from the date of payment;

ORDERED that Simon & Schuster turn over to the Board forthwith any and all monies payable to Henry Hill now held by Simon & Schuster, including the $27,958 presently held, as well as any and all future royalties or other monies that would otherwise be payable to Henry Hill or his representatives under the Contract.

ORDERED that the Sterling Lord Agency pay over to the Board any monies received from Simon & Schuster under the Contract as agent and representative of Henry Hill, as well as any other past or future monies received or to be received from the Contract on account of Henry Hill.

ORDERED that Simon & Schuster, and the Sterling Lord Agency submit to the Board a semi-annual and cumulative accounting in a form approved by the Board setting forth a statement of any and all monies paid or payable to Henry Hill, or his representatives or assigns, derived from the work *Wiseguy*, the first semi-annual report being due within thirty (30) days after issuance of the Final Determination and Order of the Board.

Dated: May 21, 1987
New York, New York

NEW YORK STATE
CRIME VICTIMS BOARD

by:

/s/
Ronald A. Zweibel
Chairman

/s/
Gennaro Fischetti
Board Member

/s/
George L. Grobe, Jr.
Board Member

/s/
Diane McGrath
Board Member

/s/
Angelo Petromelis
Board Member

Publishing Agreement
SIMON & SCHUSTER

(hereinafter called the "Publisher")

and

Henry Hill

and

Nicholas Pileggi

(hereinafter called the "Author")

whose agent is Sterling Lord Agency, Inc., 660 Madison Avenue, New York, NY 10021

agree:

FIRST: The Author

A. shall deliver to the Publisher two copies of the literary work of approximately 100,000 — 125,000 words in length now entitled *Untitled Autobiographical Non-Fiction about the Mafia* (hereinafter called the "Literary Work") in Final Form within 12 months from signing hereof;

B. makes the warranties and representations set forth in Part Two (36-45) of the Basic Agreement, except as otherwise specifically stated in THIRD (C) of this Publishing Agreement;

C. grants and assigns to the Publisher:
(i) the trade edition rights;
(ii) all other primary rights; and
(iii) the shares, provided in THIRD (A) of this Publishing Agreement, of the proceeds received on disposition of the secondary rights; and

SECOND: The Publisher

A. shall publish same in book form on acceptance by it of the Literary Work on or before Spring 1983. For purposes of computing the royalty on the first hardcover publication, the suggested catalog retail list price shall be at least $10.00, even though Publisher's actual suggested catalog retail list price is lower.

B. shall copyright the Literary Work in the United States in the name of the Author;

C. shall pay the Author and advance of *** payable as follows:
*** on signing hereof;

*** on delivery and approval of one-half of the manuscript, as satisfactory to Publisher;
*** on delivery and acceptance of the complete manuscript, (including portions previously delivered and approved), as satisfactory to Publisher;
*** on publication of hard cover edition or on May 1, 1983 whichever is sooner.
*** on publication of mass-market paperback reprint edition or on November 1, 1984 whichever is sooner.

(i) royalties at the following rates, for sales of the trade edition (less returns):
*** of the suggested catalog retail price on the first 5,000 copies sold;
*** of the suggested catalog retail price on the next 5,000 copies sold; and
*** of the suggested catalog retail price on all copies sold thereafter;

(ii) of the net proceeds received on disposition of the other primary rights, except as otherwise provided herein;

(iii) in accordance with the special provisions in Part Five of the Basic Agreement, for sales by mail order, at special discount, as unbound sheets for export from reduced printings, to book clubs, or as excess stock, or for any quality paperback or textbook editions of the Literary Work published by the Publisher itself under one of its own imprints;

THIRD: The Publisher and the Author

A. agree to share the net proceeds received on disposition of the following secondary rights as follows and that Publisher is authorized exclusively on behalf of the Author to dispose of such secondary rights as are preceded by an asterisk:

Dramatic Rights	*** % to Author	*** % to Publisher
Motion Picture Rights	*** % to Author	*** % to Publisher
Allied Motion Picture Rights	*** % to Author	*** % to Publisher
Educational Picture Rights	*** % to Author	*** % to Publisher
Radio Rights	*** % to Author	*** % to Publisher
Television Rights	*** % to Author	*** % to Publisher
First Periodical Rights	*** % to Author	*** % to Publisher

Commercial Rights	*** % to Author	*** % to Publisher
Foreign Language Rights	*** % to Author	*** % to Publisher
British Commonwealth Rights	*** % to Author	*** % to Publisher

B. agree to be bound by all of the terms and conditions of the Basic Agreement which follows and which is made an integral part of this Publishing Agreement; and

C. agree to the following special provisions, which shall prevail over any conflicting provisions in the Basic Agreement:

See Rider attached hereto and made part hereof.

/s/
Nicholas Pileggi

/s/
Henry Hill
Authors

Dated: September 1, 1981

/s/
Michael Korda
Simon & Schuster

BASIC AGREEMENT

Relating to the Agreement dated September 1, 1981 between Simon & Schuster, Publisher, and Henry Hill and Nicholas Pileggi, Author, for the publication of Untitled Autobiographical Non-Fiction about the Mafia.

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Rider to Agreement between Simon & Schuster and Henry Hill & Nicholas Pileggi, for the publication of: Untitled Autobiographical Non-Fiction about the Mafia

Redacted

PART ONE
Definition of Terms

As used in this Basic Agreement and in the Publishing Agreement:

Primary Rights.
1. "Primary Rights" shall mean all of the rights defined in Part One (2) through (13) inclusive. The territory within which such rights are exercisable is set forth in Part Three (46). "Secondary Rights" as and to the extent expressly defined in Part One (15) through (23) inclusive are excepted from implied comprehension within the definitions of Primary Rights.

Trade Edition Rights, Trade Editions.
2. "Trade Edition Rights" shall mean the exclusive right to publish, or authorize others to publish, trade editions of the Literary Work referred to in the Publishing Agreement. "Trade Editions" shall mean the first edition of the Literary Work in book form, and all other editions in book form except those referred to in the next paragraphs.

Book Club Rights.
3. "Book Club Rights" shall mean the exclusive right to authorize book clubs to print and sell the Literary Work in book form.

Mass Market Paperback Reprint Rights.
4. "Mass Market Paperback Reprint Rights" shall mean the exclusive right, after the publication of the first trade edition, to authorize others (not including book clubs) to publish, other editions of the Literary Work in formats designed primarily for mass market distribution through such channels as chain store outlets and news and magazine wholesalers.

Quality Paperback Edition Rights.
5. "Quality Paperback Edition Rights" shall mean the exclusive right to publish, or authorize others to publish, other editions of the Literary Work at less than the catalog retail price of the most recent trade edition, but at more than the catalog retail price of any mass market paperback reprint edition which has been authorized.

Textbook Rights.
6. "Textbook Rights" shall mean the exclusive right to publish, or to authorize others to publish, the Literary Work in textbook form, for distribution to or use in educational or other similar institutions.

Book Selection Rights.
7. "Book Selection Rights" shall mean the exclusive right, after publication of the first trade edition, to include, or to authorize others to include, in anthologies and other works in book form, including, without limitation, in dramatic form, selections from, parts of, and/or photographs, charts, maps, drawings, index, illustrations and other illustrative or decorative material from the Literary Work, to the extent that the Publisher deems appropriate, provided that no such selection to be included in any one book shall exceed approximately 10,000 words from or 10% of the length of a work of prose (whichever is shorter), one short story from a collection of stories, three complete poems from a collection of poems, or one act from a play.

Abridgment or Condensation Rights.
8. "Abridgment or Condensation Rights" shall mean the exclusive right, after the publication of the first trade edition, to publish, or to authorize others to publish, either as part of a book (as distinguished from a periodical), or as a separate book publication, an abbreviated version of the Literary Work, not exceeding two-thirds of the original version in length, all of which must be (i) in the original text, if it is an abridgment, or (ii) approved in writing by the Author, if it is a condensation.

Periodical Selection Rights.
9. "Periodical Selection Rights" shall mean the exclusive right, subject to any limitations required under any prior disposition of first periodical rights, to authorize others to publish in magazines or newspapers selections from, parts of, and/or photographs, charts, maps, drawings, index, illustrations and other illustrative or decorative material from the Literary Work, for the purpose of aiding or exploiting the sale of the Literary

Work, provided that no such selection to be included in any one magazine or newspaper shall exceed approximately 2,000 words from a work of prose, one short story from a collection of stories, two complete poems from a collection of poems or one scene from a play.

Second Periodical Rights.
10. "Second Periodical Rights" shall mean the exclusive right, after the publication of the first trade edition, to publish, or to authorize others to publish, the Literary Work in magazines or newspapers - either in full as a serial, or in an abbreviated version (abridged or condensed) which shall exceed approximately 30,000 words or one-half of the length of the Literary Work (whichever is less), or as a selection which shall exceed approximately 2,000 words from a work of prose, one short story from a collection of stories, two complete poems from a collection of poems, or one scene from a play.

Transcription Rights.
11. "Transcription Rights" shall mean the exclusive right to use or adapt the Literary Work, or any portion thereof, as a basis for phonographic, tape, wire, magnetic, electronic, light wave amplification, photographic, microfilm, microfiche, electronic audio-video, or audio-visual recordings, slides, filmstrips, transparencies, programming for any method of information storage, reproduction or retrieval, and for any other forms or means of copying or recording (now known or hereafter devised) the text of the Literary Work, including recordings made for the blind.

Digest Rights.
12. "Digest Rights" shall mean the exclusive right, either simultaneously or after the publication of the first trade edition, to publish, or to authorize others to publish, in any magazine — whether devoted exclusively to abbreviated versions, or consisting primarily of other material — an abbreviated version (abridged or condensed) of the Literary Work, which version shall be complete in one issue and shall not exceed approximately 30,000 words or one-half of the length of the Literary Work, whichever is less.

Other Publishing Rights.
13. "Other Publishing Rights" shall mean all publishing rights not specifically enumerated herein, whether now in existence or hereafter coming into existence.

Secondary Rights.
14. "Secondary Rights" shall mean all the rights defined in Part One (15) through (23) inclusive. The territory within which such rights are exercisable is set forth in Part Three (47).

Dramatic Rights.
15. "Dramatic Rights" shall mean the exclusive right to use, or to authorize others to use, the Literary Work, title, plot, episodes, events, scenes and characters depicted therein, in whole or in part, for (i) writing a dramatic version thereof, or a drama in any way based thereon and (ii) producing or performing either of the above on the stage.

Motion Picture Rights.
16. "Motion Picture Rights" shall mean the exclusive right to use, or to authorize others to use, the Literary Work, title, plot, episodes, events, scenes and characters depicted therein, in whole or in part, for the purpose of making motion pictures primarily for exhibition in regular commercial channels, and the right to grant the allied motion picture rights.

Allied Motion Picture Rights.
17. "Allied Motion Picture Rights" shall mean (i) the exclusive right to condense, or to authorize others to condense, the Literary Work, or the commercial motion picture treatment thereof, into not more than 7,500 words, for the purpose of promoting motion pictures based on the Literary Work, and (ii) such limited radio or television rights as are customarily granted for the purpose of using those mediums to promote motion pictures based on the Literary Work.

Educational Picture Rights.
18. "Educational Picture Rights" shall mean the exclusive right to use, or to authorize others to use, the Literary Work, in whole or in part, in making motion pictures primarily for exhibition for educational purposes.

Radio Rights.
19. "Radio Rights" shall mean the exclusive right to use, or to authorize others to use, the Literary Work, title, plot, episodes, events, scenes and characters depicted therein, in whole or in part, for AM, FM or other broadcasting.

Television Rights.
20. "Television Rights" shall mean the exclusive right to use, or to authorize others to use, the Literary Work, title, plot, episodes, events,

scenes and characters depicted therein, in whole or in part, for broadcast performances on television other than closed circuit television for private viewing by limited audiences.

First Periodical Rights.
21. "First Periodical Rights" shall mean the exclusive right, before the publication of the first trade edition, to publish, or to authorize others to publish, the Literary Work in magazines or newspapers — either in full as a serial, or in an abbreviated version (abridged or condensed) which shall exceed approximately 30,000 words or one-half of the length of the Literary Work (whichever is less), or as a selection which shall exceed approximately 2,000 words from a work of prose, one short story from a collection of stories, two complete poems from a collection of poems, or one scene from a play.

Commercial Rights.
22. "Commercial Rights" shall mean the exclusive right to use, or to authorize others to use, in whole or in part, the Literary Work, the title of the Literary Work, and the names and characterizations of characters created in the Literary Work, as a basis for (i) trademarks or trade names for other products, or (ii) toys or games.

Foreign Language Rights.
23. "Foreign Language Rights" shall mean the exclusive several rights to authorize others to translate the Literary Work in whole or in part, and to adapt same for translation into one or more foreign languages, and to publish and sell, or to authorize others to publish and sell, such translations in any part of the world.

British Commonwealth Rights.
23(a). "British Commonwealth Rights" shall mean the exclusive several rights to publish and sell and to authorize others to publish and sell the Literary Work in the English language in the British Commonwealth as constituted at the date of this agreement exclusive of Canada, Australia and Israel.
23(b). Whichever party controls Foreign Language or British Commonwealth rights to the Work shall control all publishing rights thereto. Non-publishing secondary rights shall in all instances be controlled by the party who is otherwise authorized to dispose of such rights pursuant to this agreement.

Author's Unshared Secondary Rights.
24. "Author's Unshared Secondary Rights" shall mean all secondary rights as to which, under Part THIRD (A) of the Publishing Agreement, the Author is to retain all the proceeds from disposition.

Shared Secondary Rights.
25. "Shared Secondary Rights" shall mean all secondary rights as to which, under Part THIRD (A) of the Publishing Agreement, the Author and the Publisher are to share the proceeds from disposition.

Sale or Disposition of Rights.
26. A "Sale," "Disposition" or "Grant" of rights shall include an assignment, transfer, bargain or license of the rights referred to or of any interest or option relating to such rights.

Proceeds on Disposition of Primary Rights.
27. "Proceeds on Disposition of the Primary Rights" shall mean the gross amount received on the sale or disposition of such primary rights, less any costs and expenses incurred by the Publisher in connection with or by reason of such sale or disposition.

Proceeds on Disposition of Secondary Rights.
28. "Proceeds on Disposition of the Secondary Rights" shall mean the gross amount received from the sale or disposition of such secondary rights, less any commissions which may be paid for services rendered in connection with such disposition, either to the Author's agent designated in the Publishing Agreement or to any agent authorized by the Publisher to dispose of such secondary rights. Moreover, if either (i) any other persons shall have rendered services which contributed to the value of any of the secondary rights and shall have become entitled to receive a share of the proceeds of disposition thereof (e.g., a dramatizer, a theatrical producer or a translator of the Literary Work), or (ii) upon a sale of the motion picture rights a portion of the proceeds shall be payable to the Dramatists Guild of the Authors League of America, Inc., then the amounts paid to such other persons shall also be deducted from the gross amount received from the sale or disposition of such secondary rights in order to determine the amount to be shared between the Author and the Publisher.

Final Form.
29. "Final Form" shall mean a complete, legible, typewritten manuscript of the Literary Work (including photographs, charts, maps,

drawings or index, if any of these are required), acceptable to the Publisher in content and form and ready for the printer.

Agreed Publication Date.
30. "Agreed Publication Date" shall mean the date on which the Publisher has agreed in the Publishing Agreement to publish the Literary Work.

Actual Publication Date.
31. "Actual Publication Date" shall mean the date on which the Publisher first offers the first trade edition of the Literary Work for sale to the public.

Base Royalty Rate.
32. "Base Royalty Rate" shall mean the royalty rates provided in Part SECOND(C)(i) of the Publishing Agreement.

Mail Order Sales.
33. "Mail Order Sales" shall mean copies of the Literary Work sold directly to the consumer through (i) the medium of mail order coupon advertising, or (ii) direct-by-mail circularization.

Special Discount Sales.
34. "Special Discount Sales" shall mean any sales at a discount of more than 50% from the suggested retail price. Sales to book clubs shall not be included under special discount sales.

Agreement.
35. "Agreement" (or "this agreement") shall mean the Publishing Agreement and this Basic Agreement.

PART TWO
Author's Warranties

Except as otherwise specifically stated in Part THIRD (C) of the Publishing Agreement, the Author warrants and represents that:

Sole Author and Proprietor.
36. He is the sole Author and proprietor of the Literary Work.

Authority in Grant.
37. He has full power and authority to make this agreement and to grant the rights granted hereunder, and he has not previously assigned,

transferred or otherwise encumbered the same; and that he has no prior agreement, commitment, or other arrangement, oral or written, to write or participate in writing any other book-length work and will enter into no such agreement, commitment, or other arrangement until after delivery of the manuscript of the Literary Work in Final Form.

Not Previously Published.
38. The Literary Work has not been previously published.

Not in Public Domain.
39. The Literary Work is not in the public domain.

No Infringement.
40. The Literary Work does not infringe any statutory or common law copyright.

Not Libelous.
41. The Literary Work does not invade the right of privacy of any third person, or contain any matter libelous or otherwise in contravention of the rights of any third person; and, if the Literary Work is not a work of fiction, all statements in the Literary Work asserted as facts are true or are based upon reasonable research for accuracy.

Not Unlawful.
42. The Literary Work contains no matter which is obscene or matter the publication or sale whereof otherwise violates any federal or state statute or regulation thereunder, nor is it in any other manner unlawful.

Not Injurious.
42(a). Nothing contained in the contents of the Literary Work shall be injurious to the health of the user.

Permissions.
42(b). The Author agrees that should he incorporate in the Literary Work any writings, drawings, photographs or other material either previously published or not, either of his own or another artist or writer, he shall prior to delivery of the Literary Work in Final Form obtain and, whenever requested by Publisher, shall deliver to the Publisher proper and complete written permission and authorization from the owner of the common law or statutory copyright or other right to use the same in the Literary Work or for the purpose of promoting or advertising the Literary Work throughout the world.

Investigation by Publisher.
43. The Publisher shall be under no obligation to make an independent investigation to determine whether the foregoing warranties and representations are true and correct; and any independent investigation by or for the Publisher, or its failure to investigate, shall not constitute a defense to the Author in any action based upon a breach of any of the foregoing warranties.

Effect of Warranties and Representations.
44. The warranties and representations of Author hereunder are true on the date of the execution of this agreement and shall be true on the date of the actual publication of the Literary Work, and at all intervening times. The Publisher may rely conclusively on the truth of the warranties and representations herein in dealings with any third party in connection with exercise or disposition of any rights in the Literary Work.

Warranties to Survive Termination.
45. Each of the foregoing warranties and representations shall survive the termination of this agreement.

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PART FIVE
Royalties and Other Payments

Computation of Royalties Generally.
63. Royalties shall be computed on the basis of the number of copies actually sold by the Publisher, less returns. No royalties shall be computed on copies given away for review or promotion, nor on copies given to the Author.

On Mail Orders and Special Discounts.
64. On mail order sales and special discount sales the royalty shall be 5% of the net amount actually received from such sales.

On Sheet and Export.
65. On unbound sheet sales and sales for export of the trade editions of the Literary Work, royalties shall be calculated on the net amount actually received from such sales. No royalty will be payable to the Author with respect to any unbound sheet sales or full copy sales for export where such copies are furnished to a foreign licensee at the Publisher's cost plus a handling charge for such sheets and/or copies.

On Sales from Reduced Printings.
66. On sales made out of any new printings or bindings of 2,500 copies or less, made more than one year after publication date, royalties shall be computed at one-half the base royalty rates provided hereunder.

Royalty Statements and Payments
67. The Publisher shall render royalty statements and make accounting and royalty and other payments to the Author (i) in February for the preceding period April 1 to September 30, and (ii) in August for the preceding period October 1 to March 31. In lieu of rendering statements with respect to the periods provided in the preceding sentence, Publisher may at any time make a binding election to account to Author in semi-annual statements with respect to each six-month period ending on each successive annual and semi-annual anniversary of the month of first publication of the Work. Such statements shall be rendered within one hundred-twenty days after the end of each respective six-month period.

Details to Be Shown.
68. Royalty statements shall state the number of copies sold during the period covered. If the Author so requests, the Publisher shall, within 30 days after rendering the royalty statement, advise the Author in available detail of the number of copies printed, bound, sold, and given away during the period covered by the royalty statement, as well as the approximate number of salable copies on hand at the end of said period.

Book Club Sales.
69. On all sales to book clubs, the amount allocated as royalty or other compensation to the Publisher shall be divided equally between the Author and the Publisher. No royalty will be payable to the Author on unbound sheet sales or full copy sales to book clubs where such copies are furnished at the Publisher's cost plus a handling charge for such sheets and/or copies.

Certain Primary Rights Exercised by Publisher.
70. On the exercise of quality paperback reprint edition or textbook edition rights by publication under one of its own imprints royalties (but no further advance) shall be paid to the Author at the following rates based on the catalog retail price: (i) 6% on the first 25,000 copies sold within the United States, exclusive of sales specified in subparagraph (iii) below, and (ii) 7½% on all copies sold within the United States thereafter, exclusive of the sales specified in subparagraph (iii) below, and (iii) 3% on mail order sales, and on all copies sold outside the United States, and 5% of the

net amount received for copies sold at special discounts including copies sold in bulk to book clubs, premiums and incentives and other special sales, except that in no event shall such royalties exceed the excess, if any, of net proceeds received in respect of such sales, less the Publisher's manufacturing costs.

Excess Stock Sales.

71. When the Publisher believes that copies of the Literary Work are not readily salable at regular prices within a reasonable time, the Publisher may (but not earlier than 12 months from the actual publication date) dispose of such copies as surplus at the best price obtainable. Upon such disposition, the Author shall receive in lieu of all other royalties hereunder the excess over the Publisher's manufacturing costs up to 10% of the net proceeds of such disposition.

Payment of Advances.

72. The payment of advances to the Author, including such payment following delivery of the manuscript, shall not be deemed to be evidence either that the manuscript of the Literary Work is in content or form acceptable to the Publisher, or that the Author has complied with his warranties or other agreements hereunder.

Repayment of Advances.

73. Any advance royalties or other sums paid to or on behalf of the Author under this agreement or otherwise, and any other payments due from the Author to the Publisher, may be applied in reduction of any payments due to the Author under this agreement.

Security Interest.

74. To secure the advances made to Author, and payment of any other sums which may be or become due to Publisher hereunder, Author hereby grants to Publisher (i) a security interest under the Uniform Commercial Code in the manuscript to be delivered by him to Publisher hereunder, said security interest to attach to the manuscript as and when it is written, and to any and all outlines, drafts, notes, and written background material relating thereto; and (ii) the right to immediate possession, at any time upon demand, of the said manuscript, outlines, drafts, notes, permissions, consents, and background material. Author agrees to execute and deliver to Publisher, in form requested by Publisher, a financing statement and such other documents which Publisher may require to perfect its security

interest in the said manuscript, outlines, drafts, notes and background material.

Reserve for Returns.

75. Any amounts payable to the Author hereunder shall be subject to such reserve for returns of copies of the Literary Work as the Publisher shall establish in its reasonable discretion.

Author's Right to Examine Books of Account.

76. The Author may, upon written request, examine the books of account of the Publisher in so far as they relate to the Literary Work, for the period of two years immediately preceding such examination.

Author's Agent.

77. If the Author has an agent, as indicated by the inclusion of an agent's name and address in the Publishing Agreement, until receipt by the Publisher of written notice by the Author canceling the agent's authority hereunder, all payments accruing to the Author under this agreement shall be made to such Author's agent, and the receipt by the Author's agent shall constitute a full and valid discharge of the Publisher's obligations for such payments under this agreement. Author's agent is fully authorized to do and perform all acts on behalf of the Author in all matters arising out of or under this agreement, and the Publisher may conclusively rely upon such authority until actual receipt by Publisher of written notice, signed by the Author, canceling or limiting such authority. No such revocation or limitation shall affect the validity of any act of the agent prior to receipt of such notice by the Publisher to the extent that the Publisher has relied thereon.

PART SIX
Delivery of Manuscript and Correction of Proofs

Failure of Author to Deliver Work in Final Form.

78(a). Timely delivery of the Literary Work in Final Form is essential to the Publisher and is of the essence of this agreement. If the Author fails to deliver the Literary Work in Final Form within the time specified, the Publisher shall have an option to give the Author a notice in writing terminating this agreement, and in such event the Publisher may then recover and the Author agrees to repay on demand all amounts advanced to the Author.

(b). Additionally, the Publisher shall not be obligated to accept or publish the Literary Work if, in its sole editorial judgment, such work is not satisfactory to it. Provided, however, that if the Author shall, within the time specified, have delivered the Literary Work in what he represents to be its completed form, the Literary Work shall be deemed to be acceptable in content and form to the Publisher unless, within 90 days after receipt thereof by the Publisher, the Publisher shall give to the Author a notice in writing stating that in its editorial judgment the work is not acceptable to it, in which case this agreement shall thereupon terminate and the Publisher may then recover and the Author agrees to repay on demand all amounts advanced to the Author. If Publisher so elects, in lieu of such notice, it may give written notice to the Author stating the particular respects in which the submitted manuscript is unacceptable, including, without limitation, reservations or questions of the Publisher concerning matters within any of the warranties, representations and agreements contained in Paragraphs 36-42. Any written request by or on behalf of the Publisher for changes in or for substantiation or confirmation of any statement in the Literary Work shall be deemed, without any need expressly to say so, to constitute notice that the manuscript is then unacceptable to the Publisher without responses satisfactory to the Publisher, and that it has not been accepted. If such request be made of the Author or his agent, unless the Publisher shall otherwise agree in writing, failure of the Author, within 60 days after the date of such request, to respond to the satisfaction of the Publisher in respect to all subject matter of such request shall have the same significance and effect as failure to deliver a manuscript in Final Form after a notice as provided in the second sentence of this Paragraph 78. Correspondingly, a 90-day period within which the Publisher may reject a Literary Work in the exercise of its editorial judgment or for non-compliance to its satisfaction with a request for changes, substantiation or confirmation, shall run from the last date on which the Author purports to have submitted responses in compliance with the Publisher's request for changes, substantiation or compliance. A request for changes or substantiation or confirmation as aforesaid shall not preclude other similar requests prior to the elapse of such 90-day period, or within a new like period after the receipt by Publisher or Author's tendered compliance with Publisher's request.

Delay for Author's Illness.

79. If, however, because of illness or any other factor beyond his control, the Author is unable so to deliver the Literary Work, the date for

such delivery shall be extended for a reasonable time. If after the elapse of such reasonable time the Author continues to fail or is unable to deliver the Literary Work or to satisfy the Publisher's request(s) for changes or substantiation, the Publisher may give written notice of termination, effective at the expiration of 60 days or such longer period as the Publisher may specify in such notice, and if the Author shall fail to deliver the manuscript in Final Form within such 60 days or specified longer period, as the case may be, this agreement will be terminated at the expiration of said period, and the Publisher may recover all amounts advanced to the Author. If the Author dies prior to acceptance by the Publisher whether or not following delivery of the manuscript in Final Form, the Publisher, in its sole discretion, may terminate this agreement upon giving a written notice of termination to the Author's personal representatives within 90 days of receipt by Publisher of notice of his death, in which case the Publisher may then recover from such personal representatives all amounts previously advanced hereunder.

Failure to Deliver Photos, Charts, etc.

80. If the Author fails to deliver photographs, charts, maps, drawings, or the index, in cases where any of these are required for the Literary Work, the Publisher shall have the right (but not the obligation) to cause the same to be prepared and to charge the cost of such preparation to the Author.

Correction of Proofs.

81. The Publisher shall supply the Author with one set each of galley and, at its option, page proofs, and the Author shall return each set of proofs with his corrections to the Publisher within 21 days of receipt thereof. The Publisher shall also proofread the proofs. If, because of his own fault, the Author shall fail to return the corrected proofs within the 21-day period herein specified, the Publisher may publish the Literary Work without the Author's approval of the proofs — provided, however, that if, because of illness or any other factor beyond his control, the Author informs the Publisher that he is unable so to return the corrected proofs, his time for correcting such proofs shall be extended for another 21-day period, and after that period the Publisher may publish the Literary Work without the Author's approval of the proofs.

Cost of Author's Alterations.

82. If, in the correction of galley and page proofs, the Author requests changes from the text of his manuscript, the Author agrees to pay to the

Publisher the cost of such changes, over 15% of the original cost of composition, provided that, at the Author's request, the Publisher shall submit an itemized statement of such charges, and shall make available corrected proofs for the Author's inspection at the Publisher's office.

No Obligation to Publish.

83(a). Notwithstanding anything contained herein to the contrary, in no event shall the Publisher be obligated to publish the Literary Work if, in its sole and absolute judgment, the Literary Work contains libelous or obscene material, or its publication would violate the right of privacy, common law or statutory copyrights, or any other rights of any person. In such event, Publisher shall be entitled on demand to the return of all monies advanced to the Author hereunder, and to terminate this agreement. Notwithstanding any request by Publisher for change or substantiation, nothing in this agreement shall be deemed to impose upon the Publisher any duty of independent investigation or relieve the Author of any of the obligations assumed by him hereunder.

(b). The Publisher shall not be obligated to publish the Literary Work if, whether before or after acceptance thereof, supervening events or circumstances since the date of this agreement have, in the sole judgment of the Publisher, materially adversely changed the economic expectations of the Publisher in respect to the Literary Work at the time of the making of this agreement, and in such event all of the Publisher's rights in and to the Literary Work shall terminate and revert to the Author on the giving by the Publisher to the Author of notice of its decision, or, if the Publisher fails to do so, by the Author pursuant to Paragraph 84, and in any such event, the Author shall be entitled to retain all payments to the Author theretofore made under this agreement.

PART SEVEN
Delays in Publication

Delays Due to Publisher's Fault.

84. The Publisher, in its sole and absolute discretion, shall have the right to reschedule publication of the Literary Work beyond the agreed publication date for a reasonable time and also in the event of late delivery by the Author of the manuscript in Final Form. Thereafter, if publication of the Literary Work is delayed in the absence of excusable circumstances the Author's sole and exclusive remedy shall be to give the Publisher a

notice in writing, stating that if the Publisher fails to publish the Literary Work within 180 days after the date of such notice, then all of the Publisher's rights in and to the Literary Work shall terminate at the end of such 180-day period; and if, in such event, the Publisher shall fail to publish the Literary Work within such 180-day period, all of the Publisher's rights in and to the Literary Work shall terminate and revert to the Author, and the Author shall be entitled, as liquidated damages and in lieu of all damages and remedies, legal or equitable, to retain all payments therefore made to Author under this agreement.

Delays Not Due to Publisher's Fault.

85. If publication is delayed beyond the agreed publication date because of acts or conditions beyond the control of the Publisher or its suppliers or contractors, including (by way of illustration and not by way of limitation) war, shortages of material, strikes, riots, civil commotions, fire or flood, the agreed publication date shall be extended to a date six months following removal of the cause of the delay.

PART EIGHT
Disputes

Dispute Between Parties.

86. In the event of any dispute under this agreement arising between or among the parties, any party may request any other party to agree to submit such dispute to arbitration in the City of New York in accordance with the then rules of the American Arbitration Association. Absent an agreement to arbitrate, exclusive jurisdiction for the determination of any such dispute solely between or among parties to this agreement is hereby vested in the Supreme Court, New York County, or, at the election of either party if the jurisdictional prerequisites at the time exist, in the United States District Court for the Southern District of New York, and each party hereto agrees to submit to the jurisdiction of either such court in the City and State of New York for the determination of any such dispute, and hereby consents (in addition to service of process by any other means provided at the time by law) to service of process on him or it, as the case may be, by registered mail, first class postage prepaid, return receipt requested, addressed to the defendant named in such process at the address to which notices may be given pursuant to Paragraph 106 of this

agreement, and that notice by mail so given shall be deemed to confer jurisdiction upon such court.

PART NINE
Indemnification and Defense of Litigation

Indemnification by Author.

87. The Author shall indemnify and hold the Publisher harmless against any loss, liability, damage, cost or expense arising out of or for the purpose of avoiding any suit, proceeding, claim or demand or the settlement thereof, which may be brought or made against the Publisher by reason of the publication, sale, or distribution of, or disposition of rights in respect to, the Literary Work, based on the contents of the Literary Work, except in connection with matters inserted in the Literary Work by or at the direction of the Publisher or involving solely controversies arising out of or based on commercial transactions between the Publisher and the customer.

Notice of Suits Brought.

88. Prompt notice of any such non-excepted suit, proceeding, claim or demand brought or made against the Publisher or Author shall be given to the Author or Publisher respectively.

Cost of Defending Suits.

89. If any such non-excepted suit, claim or demand is brought or made, the Publisher may elect (i) to undertake the defense thereof, or (ii) to notify the Author to undertake the defense. If the Publisher does so notify the Author, the Author shall undertake such defense; and in such cases the Publisher may, at its option, join in the defense. In all the foregoing events the cost and expense of any defense shall be borne by the Author, unless (a) such suit, claim or demand arises solely out of an act or omission of the Publisher, in which case the cost and expense shall be borne by the Publisher, or (b) the Author has, pursuant to notification from the Publisher, undertaken the defense and the Publisher at its option elects to join with the Author in the defense, in which case the total cost and expense (including reasonable counsel fees) shall be shared equally by the Publisher and Author.

Publisher May Withhold Payments.

90. Whenever any such non-expected suit, claim or demand is instituted, the Publisher may withhold, payments due to the Author under this agreement between the Author and the Publisher, subject, however, to the Author's right to draw on such sums to defray his expenses in connection with such suit, claim or demand. If a final adverse judgment is rendered in such a suit and is not discharged by the Author, the Publisher may apply the payments so withheld to the satisfaction and discharge of such judgment.

PART TEN
Infringement by Others

Suits, by Publisher or Author.

91. If during the existence of this agreement the copyright, or any other right in respect to the Literary Work, is infringed or violated, the Publisher may, at its own cost and expense, take such legal action, in the Author's name if necessary, as may be required to restrain such infringement and to seek damages therefor. The Publisher shall not be liable to the Author for the Publisher's failure to take such legal steps. If the Publisher does not bring such an action, the Author may do so in his own name and at his own cost and expense. Money damages recovered for an infringement shall be applied first toward the repayment of the expense of bringing and maintaining the action, and thereafter the balance shall be divided equally between the Author and Publisher.

PART ELEVEN
Withdrawal from Publication

If Discontinued or Out of Print.

92. If, at any time after the expiration of two years from the actual publication date, either of the following events occurs:

(i) the Publisher notifies the Author in writing that the Publisher intends to discontinue publication of both the trade and textbook editions of the Literary Work; or

(ii) the Publisher allows all editions of the Literary Work to go out of print and does not place any edition on sale within six months after the Author has made a request therefor in writing, and if there is

no English language or foreign language reprint edition authorized by Publisher available or contracted for,

the Author may by a notice in writing (a) revoke the Publisher's right to publish any further copies of the trade editions of the Literary Work; (b) revoke the grant to the Publisher of such of the other primary rights as the Publisher has not already exercised or disposed of; (c) revoke any power given to the Publisher to dispose of such secondary rights as have not already been disposed of; and (d) revoke any grant of rights made to the Publisher in the Publishing Agreement to share in the proceeds on disposition of such secondary rights as have not already been disposed of. In such event the Author shall have the right to purchase any available plates or film of the Literary Work at cost, and/or any remaining copies or sheets of the Literary Work at the Publisher's manufacturing cost. If the Author does not purchase such plates, copies or sheets, the Publisher may melt the plates, and may sell the copies or sheets at any price and retain the proceeds of the sale.

PART TWELVE
Breach by Publisher

Termination for Substantial Breach.

93. Except as otherwise specifically provided in this agreement, if the Publisher shall commit a substantial breach of this agreement and shall fail to remedy the breach within 60 days after receiving a written notice by registered mail from the Author requesting the Publisher to remedy such breach, the Author may by a notice in writing (i) revoke the Publisher's right to publish the trade editions of the Literary Work, if it has not already been published at such time; (ii) require the Publisher to cease further publication of the trade editions of the Literary Work, if it has already been published at such time, but in such event the Publisher shall be permitted to sell all copies of those editions of the Literary Work which have already been printed or are in the process of being printed; (iii) revoke the grant to the Publisher of such of the other primary rights as the Publisher has not already exercised or disposed of; (iv) revoke any power given to the Publisher to dispose of such secondary rights as have not already been disposed of; (v) revoke any grant of rights made to the Publisher in the Publishing Agreement to share in the proceeds on disposition of such secondary rights as have not already been disposed of. In such event the Author shall have the right to purchase any available

plates or film of the Literary Work at cost, and/or remaining copies or sheets of the Literary Work already printed at the Publisher's manufacturing cost. If the Author does not purchase such plates, copies or sheets, the Publisher may melt the plates, and may sell the copies or sheets at any price and retain the proceeds of such sale. Any right of the Author pursuant to Paragraph 76 shall survive such termination.

PART THIRTEEN
Bankruptcy or Insolvency of Publisher

Bankruptcy, Receivership, Assignment for Creditors.

94. If the Publisher is finally adjudicated a bankrupt, or if a receiver is appointed, or if an assignment is made for the benefit of creditors, the Author may by a notice in writing (i) revoke the Publisher's right to publish the trade editions of the Literary Work, if it has not already been published at such time; (ii) require the Publisher to cease further publication of the trade editions of the Literary Work, if it has already been published at such times, but in such event, if the Author consents in writing, the Publisher shall be permitted to sell all copies of those editions of the Literary Work as have already been printed or are in the process of being printed (provided that if the Author has died, or if the Author does not answer the Publisher's request for such consent within a reasonable time, or if after reasonable diligence the Publisher has not succeeded in informing the Author that such consent is desired, the Author shall be deemed to have given his consent), (iii) revoke the grant to the Publisher of such of the other primary rights as the Publisher has not already exercised or disposed of, (iv) revoke any power given to the Publisher to dispose of such secondary rights as have not already been disposed of, and (v) revoke any grant of rights made to the Publisher in the Publishing Agreement to share in the proceeds on disposition of such secondary rights as have not already been disposed of. For the purposes of this PART THIRTEEN, "the Publisher" shall include successors in interest of the Publisher, including a trustee in bankruptcy, a receiver, or an assignee for the benefit of creditors. In such event the Author shall have the right to purchase all copies or sheets of the Literary Work in the possession of the Publisher and the plates therefor, at the then fair market value as determined by arbitration under the then rules of the American Arbitration Association. If the Author does not purchase such plates, copies or sheets,

the Publisher may melt the plates, and sell the copies or sheets at any price and retain the proceeds of such sale.

PART FOURTEEN
Miscellaneous Provisions

Publisher Shall Determine Style, etc.
95. The format, style of printing and binding, and all other matters relating to the manufacture, sale, distribution and promotion of the Literary Work shall be determined at the sole discretion of the Publisher. The Publisher may not make any changes in the manuscript of the Literary Work without the consent of the Author, except that the Publisher may make changes (i) in the capitalization and punctuation of the Literary Work, to make it conform to the Publisher's accepted style, or (ii) in the spelling and punctuation of a British edition of the Literary Work, to make it conform to American usage.

Title Changes.
96. The title of the Literary Work as set forth in the Publishing Agreement may be changed by mutual agreement of the Author and the Publisher.

Single Author to Represent.
97. When there is more than one author, any one (and an alternate) may be designated in the Publishing Agreement to act on behalf of all the authors jointly, and the Publisher may rely on the acts of the Author or his alternate so designated as representative of and binding upon all the Authors; and in the absence of such designation, the Publisher may deal with any one of the Authors as the agent and representative of all, and may rely on the acts of such Author-representative as binding on all the Authors. When there is more than one author, unless the Publishing Agreement specifies otherwise or until receipt by the Publisher of contrary instructions, the Publisher may assume that all Authors share equally in proceeds payable hereunder and may either issue separate checks in equal amounts payable to each Author severally or single checks payable jointly to all Authors.

Price Changes.
98. The Publisher may change the catalog retail price of the trade editions provided its royalties on trade editions sales are calculated on a

retail price not less than the minimum price fixed in the Publishing Agreement.

Free Copies for Author; Purchases by Author.
99. The Publisher shall present the Author with ten free copies of the first trade edition, and one free copy of any other edition published by the Publisher, upon publication. The Author shall have the right to purchase additional copies of the trade editions for his own use, and not for resale, at a 40% discount from the catalog retail price.

Publisher to Execute Documents.
100. If any of the rights granted to the Publisher revert to the Author, the Publisher shall execute all documents which may be necessary or appropriate to revest all such rights in the Author.

Acceptance of Agreement.
101. The agreement shall be binding on the Publisher only when it is accepted by an authorized officer of the Publisher.

Laws Applicable to Agreement.
102. The agreement shall be construed in accordance with the laws of the State of New York.

Agreement Binding on Successors in Interest.
103. The agreement shall be binding upon and inure to the benefit of the executors, administrators and assigns of the Author, and upon and to the successors and assigns of the Publisher.

Modification of Agreement.
104. The agreement may not be modified, altered or changed except by an instrument in writing signed by the Author and the Publisher.

Waivers Are Not Cumulative.
105. No waiver of any term or condition of this agreement, or of any breach of this agreement or of any part thereof, shall be deemed a waiver of any other term or condition of the agreement or of any later breach of the agreement or of any part thereof, nor shall publication or continued publication or payment by the Publisher following notice or claim of facts which, if true, would constitute a breach of warranty, representation or agreement of the Author, constitute or imply any waiver by the Publisher of any defenses, rights or remedies of the Publisher.

Notices.

106. All notices to be given hereunder by either party shall be in writing and shall be sent by registered mail to the other party at the respective addresses as they are given in the Publishing Agreement, unless said addresses are changed by either party by a notice in writing to the other party.

Singular Shall Include Plural.

107. Whenever required by the context, the singular shall include the plural, and the plural the singular, and the masculine shall include the feminine and the neuter. The "Author" shall include the "Authors" if there are more than one.

Captions, Table of Contents, etc.

108. Captions or marginal notes, and the table of contents of this agreement are for convenience only, and are not to be deemed part of the agreement.

Memorandum of Publishing Agreement.

109. Publisher is authorized to record this Agreement, or a memorandum thereof, which Author shall execute, in the Copyright Office of the United States pursuant to Section 205 of the Copyright Law of the United States. To the extent, if any, that this Agreement and said memorandum shall conflict, the terms of this Agreement shall be controlling.

21 August 1981

Mr. Henry Hill
c/o Robert Simels, Esq.
Runes & Simels
400 East 54 Street
New York, New York 10022

Dear Henry,

The following when signed by the two of us shall confirm our agreement:

1. We agree to cooperate with each other in the preparation and sale of a book-length manuscript concerning your life ("the Work"). You agree to furnish me with all material relating to the subject matter which you possess or have access to. You shall also use your best efforts to help me gather material relevant to the manuscript from other sources.

2. (a) All monies received from the disposition of any and all rights to the Work throughout the world shall be divided between us as follows:

Printed page rights — *** to you, *** to me
Performance rights (motion picture, television, stage, radio) — *** to you, *** to me.

(b) I shall advance the cost of tapes and the transcription of the tapes and The Sterling Lord Agency, Inc. is authorized to deduct of such costs from your share of the monies under paragraph 2(a). Such costs will be shared equally between us but no additional expenses shall be shared without our prior mutual consent.

3. (a) We shall consult with each other regarding the manuscript of the Work and you agree to make yourself available at mutually convenient times for such consultation and conference.

(b) I shall have full editorial control. However I agree to accede to all reasonable requests by you to delete any heretofore private details as may constitute a physical danger to you or your family. It is understood that trial records and testimony are not considered private.

4. The Work will be by Nicholas Pileggi, and the title or subtitle will include your name if possible.

5. The copyright in the Work shall be secured in our joint names throughout the world.

6. (a) All contracts for the sale, lease or license of the Work shall be made by us jointly, and we each agree not to unreasonably withhold our consent to such agreements.

(b) We both agree to be bound by any clause the Publisher may require with respect to competing works, waiver of right of privacy, libel and slander.

7. Each party hereto warrants and represents to the other that any material written or provided by him in connection with the Work is not and will not be in any way a violation of a copyright or common law right or right of privacy or any other rights of any person, firm or corporation and that it contains nothing of a libelous, obscene or illegal character, and each party agrees to indemnify, defend and hold the other party harmless against any loss, damage, claim or action including reasonable attorneys fees and disbursements arising out of or relating to a breach of any of the foregoing warranties or the incorrectness of any of the foregoing representations. Each party agrees to give the other prompt written notice of the institution of any claim alleging any violation of the above warranties and representations.

8. We have heretofore employed and hereby designate The Sterling Lord Agency, Inc., 660 Madison Avenue, New York, NY 10021, our sole and exclusive agent in connection with this Work. All payments due or to become due to any of us in connection with the sale, lease or license of this manuscript shall be made to and in the name of said agent who is hereby authorized to give receipt for same in our behalf. For services rendered to us by said agent, we agree to pay and do hereby authorize our said agent to receive and retain ten percent (10%) of any and all monies payable to us in respect to said Work, except that our agent may retain 15% in the case of British sales, and 20% in the case of foreign language sales.

9. This agreement shall be binding upon each of us and our respective heirs, legal representatives, next of kin, successors and assigns. It cannot be modified, altered or changed except by further instrument in writing signed by us. Wherever executed, this agreement shall be deemed made in and governed by the laws of the State of New York applicable to agreements fully to be performed in this State.

Sincerely,

/s/

Nicholas Pileggi
The Sterling Lord Agency, Inc.
660 Madison Avenue
New York, NY 10021

Agreed to and accepted:

/s/

Henry Hill

/s/

AGREED TO AND
ACCEPTED AS FAR AS WE
ARE CONCERNED:
The Sterling Lord Agency, Inc.

NEW YORK STATE
CRIME VICTIMS BOARD LETTERHEAD

January 31, 1986

Simon & Schuster
1230 Avenue of the Americas
New York, New York 10020

Attn: Trade Publicity Department

Gentlemen:

It has come to our attention that you may have contracted with a person accused or convicted of a crime for the payment of monies to such person.

Section 632-a of the Executive Law of the State of New York provides in part:

> "Every person, firm, corporation, partnership, association or other legal entity contracting with any person or the representative or assignee of any person, accused or convicted of a crime in this state, with respect to the reenactment of such crime, by way of a movie, book, magazine article, tape recording, phonograph record, radio or television presentation, live entertainment of any kind, or from the expression of such person's thoughts, feelings, opinions or emotions regarding such crime, shall submit a copy of such contract to the Board and pay over to the Board any moneys which would otherwise, by terms of such contract be owing to the person so convicted or his representatives. The Board shall deposit such moneys in an escrow account for the benefit of and payable to any victim of crimes committed by: (1) such convicted person; (2) by such accused person, but only if such accused person is eventually convicted of the crime and provided that such victim within five years of the date of the crime, brings a civil action in a court of competent jurisdiction and recovers a money judgment against such person or his representatives."

The Crime Victims Board is charged with the implementation of this statute.

We, therefore, call upon you to provide within thirty days the following information on any contracts or agreements you may have with any person, representative or assignee of a person who has been accused or convicted of a crime:

1) Copies of all such contracts or agreements;
2) Name(s) of accused or convicted criminals, suspected assignee, or representative(s) contracted with;
3) Dollar amounts and dates of all payments made to date to such accused or convicted person or his representative(s).
4) Dollar amounts and location of funds owed but not yet paid to such accused or convicted person or his representative(s), with anticipated date(s) of payment;
5) Estimate of dollar amounts which may be owed to such accused or convicted person in the future;
6) Description, location and dates of crimes committed;
7) Names of any known victims of such crimes.

We particularly request the above information regarding the following:

HENRY HILL/Publication of *WISEGUY*

We ask that you suspend payments on any contracts which may be potentially covered by the new law.

Upon receipt of the above requested information, you will be notified further concerning the disposition of any monies effected by this law.

Your prompt cooperation in this matter is appreciated. If you desire any additional information or have any questions concerning the requested information, please contact the undersigned. For your information a copy of the full statute and the Board's Rules regarding §632-a of the Executive Law is enclosed.

Very truly yours,

/s/

Paul S. Hudson, Counsel

PH:jt
Enclosures

NEW YORK STATE
CRIME VICTIMS BOARD LETTERHEAD

January 31, 1986

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c/o Simon & Schuster
Trade Publicity Department
1230 Avenue of the Americas
New York, New York 10020

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Very truly yours,

/s/

Paul S. Hudson, Counsel

PH:jt
Enclosures

SIMON & SCHUSTER LETTERHEAD

May 22, 1986

Paul S. Hudson, Esq.
Counsel
Crime Victims Board
97 Central Avenue
Albany, New York 12206

Re: "*Wiseguy*" by Nicholas Pileggi

Dear Mr. Hudson:

On behalf of Simon & Schuster, Inc. and Nicholas Pileggi, and in response to the Board's request for certain documents and information relating to the publication of *Wiseguy*, I am enclosing copies of the following:

1. A Publishing Agreement, dated September 1, 1981, executed by Simon & Schuster, Henry Hill and Nicholas Pileggi.

2. Two letter amendments, dated December 22, 1982 and September 8, 1983 respectively, each extending the manuscript delivery date under the Publishing Agreement and each executed by Simon & Schuster and by the Sterling Lord Agency, Inc., as agent for Messrs. Pileggi and Hill.

3. Agreement, dated August 21, 1981, executed by Nicholas Pileggi, Henry Hill and the Sterling Lord Agency, Inc. concerning the preparation and sale of a book length manuscript.

Please be advised that, as of the date of this letter, Simon & Schuster has made the following payments, under the Publishing Agreement, to the Sterling Lord Agency for the account of Mr. Hill:

October 10, 1984	$ 19,250
October 14, 1984	19,250
May 2, 1985	19,250

July 15, 1985	9,625
July 25, 1985	28,875
	$ 96,250

As we have discussed, I am providing the foregoing documents and information in an effort to cooperate with the Board but subject to full reservation of our rights with respect to questions concerning the application and constitutionality of Section 632-a of the Executive Law in general and, in particular, as applied to the publication of *Wiseguy*. Further, in providing the enclosed documents I am relying upon your opinion and the Board's confirmation that these documents and the information contained therein are "trade secrets" within the meaning of § 87(b)(2)(e) of the Public Officers Law and will therefore be accorded confidential treatment. As we discussed, I understand and accept that such treatment will not be given to information concerning the amount of the payments made for the account of Mr. Hill under the Publishing Agreement.

Please call if you have questions concerning the enclosed documents. Unless I hear from you to the contrary, I will conclude that the information provided herein satisfies the Board's Subpoena of May 1, 1986.

Very truly yours,

/s/

John C. Bender

JCB/hg
Enclosure

THE FOLLOWING EXCERPTS ARE REPRODUCED FROM AN ARTICLE PUBLISHED OCTOBER 12, 1987, IN *THE NEW REPUBLIC*

How social mobility — and drugs — are destroying the old code.

THE MAFIA AND THE MELTING POT

by Jacob Weisberg

Jacob Weisberg, a former TNR reporter-researcher, is an intern at *Newsweek*'s Washington bureau.

For the last 30 years experts have been regularly pronouncing the Italo-American Mafia dead. Sociologists theorize that social mobility killed it; they argue that Italians ought logically to follow the pattern of the Irish and the Jews, who abandoned their criminal activities when other paths to prosperity and political power became open to them in the early part of the century. Police officials and politicians point more straightforwardly to the success of their crackdowns and prosecutions of mob bigwigs. All of these accounts make a good deal of sense. In theory the Sicilianate Mafia should no longer exist. Yet the facts have lagged somewhat behind, proving the forecasters premature time and again.

Finally, however, they may have a case. Only in the last few years has evidence emerged that makes it possible to say, tentatively, that the twilight of the gangsters is upon us. As anyone who sees the New York City tabloids knows, the mob has had a tough year in court. Despite the surprising acquittals of John Gotti and other leaders of the Gambino clan, guilty verdicts in the recent "Mob Commission" and "Pizza Connection" show trials did serious damage to four of New York's still-regnant five families: Bonanno, Colombo, Genovese, and Lucchese. Bosses of the last three — "Fat Tony" Salerno, Tony "Ducks" Corallo, and Carmine Persico — are serving sentences ranging from 40 to 100 years.

Wiseguy: Life in a Mafia Family
by Nicholas Pileggi
(Simon and Schuster, 256 pp., $17.95; Pocket Books, $4.50)

Mafia Business: The Mafia Ethic and the Spirit of Capitalism
by Pino Arlacchi
translated by Martin Ryle
(Verso, 239 pp., $17.95)

The Underground Empire: Where Crime and Governments Embrace
by James Mills
(Doubleday, 1,165 pp., $22.95; Dell, $5.95)

Rudolph Giuliani, the flashy and ambitious U.S. attorney in Manhattan, deserves a great deal of credit. He has put new investigative and prosecutorial tools to good use in dogging the mob. Most important, he has employed sophisticated electronic surveillance and the RICO statute, which enables him to crack down on the infiltration of legitimate business by criminal organizations. Giuliani combines high-tech law enforcement with a venerable psychological technique for attacking the mob. What appears to many as mere showboating and publicity-mongering is actually an age-old method perfected by Italian cops.

Giuliani's progenitor is not Eliot Ness but Cesare Mori, the nemesis of the Sicilian Mafia in the 1920s. He was fond of issuing personal challenges to individual Mafiosi and mimicking their braggadocio. Like Giuliani, Mori realized that the battle for public opinion was essential to his war on the mob. After making a public bid for the affection of the community that harbored and tolerated them, Mori made the pretense of challenging the Mafiosi to a fair fight, insisting that in a frank struggle for supremacy, his legal weapons were stronger than their illegal ones.

Of course the overreaching claims of such lawmen should be taken skeptically; hyperbole is one of their weapons. Contrary to popular mythology, for example, La Cosa Nostra has never been a centrally directed conspiracy, here or in Italy. It can easily survive decapitation.

The five families have accomplished many successions in the past, and Mafia kingpins are adept at conducting diplomacy from prison cells. The Fat Tonys weren't going to be around for long in any case; natural causes and occupational hazards such as after-dinner gunfire tend to solve the problems of septuagenarian mobsters soon enough.

In fact, the Mafia is showing symptoms of internal maladies far more dangerous than its current legal tribulations. Among the most fascinating material that emerged in the recent prosecutions were recordings of the old timers lamenting the decline of respect and obedience among the rank and file in their organizations. One tape played at the Mob Commission trial captured a heartsick Salerno bemoaning a feckless underling who had the temerity to call him Fat Tony to his face. When Tony Ducks suggested curing the upstart with a dose of lead, Salerno said he was just too blue to order a rubout. He told Ducks that he'd rather retire from a mob where there was no appreciation for his seniority and achievements.

Another poignant moment occurred when

Aniello Dellacroce, a capo in the Gambino clan, took time out from threatening to bury an insubordinate soldier in "some fucking hole someplace" to utter the modern mobster's lament:

> Things change now because there's too much conflict. People do whatever they feel like. They don't train their people no more. There's no more — there's no more respect. If you can't be sincere, you can't be honest with your friends — then forget about it. Ya got nothin'.

Dellacroce was struggling for an English equivalent of the Italian *omerta*, the code of honor that has always assured the integrity of the Mafia's internal proceedings on both sides of the Atlantic.

After more than a hundred years, the system of *omerta* is no longer functioning very well. Here and in Italy, *uomini di 'onore*, men of honor, are now talking to the cops, copping pleas, and testifying against their former friends and employers. Most important, the owners aren't signing new players. New York's five families, as well as Sicily's great *cosche*, have experienced a crisis in recruitment. According to a recent New York Police Department report, the average age of local Mafiosi is over 60. It is this evidence of terminal anemia more than a few important convictions that substantiates Giuliani's claim that 1987 is "the Mafia's worst year."

Unfortunately the situation at the moment is not so simple as tough-guy Giuliani winning the war against the "scumdogs," as Geraldo Rivera called the Mafiosi on his recent sensationalistic television special, "The Sons of Scarface." The mob Giuliani has tackled represents only one cultural grouping, and no longer the most significant. For many years the Sicilians have been yielding hard-won turf to leaner, and sometimes meaner, mobs based in South America and Asia.

Indeed, the old mob never adapted very well to the drug trade, and that has become far and away the most important category of criminal activity, dwarfing traditional Mafia enterprises such as extortion, protection, and robbery in the amounts of both money and violence it generates. The Fat Tonys and Big Tunas symbolize organized crime's colorful past, but it is the new immigrants — Chinese, Mexicans, Vietnamese, and Colombians — who represent its worrisome future.

Nowhere has the story of how drugs are destroying La Cosa Nostra been better captured than in Nicholas Pileggi's *Wiseguy*, the as-told-to account of a mid-level gangster. Henry Hill was 11 in 1955 when he wandered out of his Brooklyn home into the Euclid Avenue Taxicab and Limousine Service in Brownsville-East New York, Brooklyn, looking for a job. The owner of the cabstand was one Paul Vario, a capo in the Lucchese family,

who liked the kid and put him to work shining Cadillacs. Hill, half-Sicilian despite his name, moved quickly from collecting numbers and selling beer to minors to fencing stolen property and passing counterfeit bills: crimes for apprentice wiseguys.

By 14, he was collecting $190 a week for a no-show construction job and practicing his arson technique. Hill logged his first arrest at 16 for trying to buy snow tires with a stolen credit card. After a stint in the Army, he moved on to a higher class of felony: hijacking, cargo theft, extortion. Pileggi accepts Hill's questionable assertion that although he witnessed murders and occasionally helped to bury bodies, he never killed anybody himself.

The most fascinating bits of description are Hill's nuts-and-bolts explanations of the hustles he worked — how he and his partners fixed horse races and college basketball games, how they shook down restaurant owners, how they fenced "swag," or stolen merchandise. Mundane details become scintillating when Hill describes the mechanics of, say, a truck-hijacking racket. Wiseguys (members of the Mafia) cooperated with truckers in "give-ups." A driver would take a coffee break and leave his keys in the ignition. By the time he'd reported the disappearance of his truck to the police, a $200,000 haul was already being unloaded in a cooperative warehouse. Hill and the other thugs would protect the "give-up" guys when their bosses tried to fire them. The glee in his voice is evident as Hill relates the specifics: how he and his pals disarmed alarms and copied addresses off the licenses of drivers lest they be tempted to testify against the gangsters.

As in compulsive gambling, there is a thrill that racketeers seem to derive from stealing that far outstrips their greed. Though clearly in its grip himself, Hill exhibits a remarkable understanding of this criminal psychology. Early in the book, he relates how his mentor, Paul Vario, though a multimillionaire, loved few things so much as old-fashioned credit card fraud:

> The fact that a guy like Paul Vario, a capo in the Lucchese crime family, would even consider going out on a social occasion with his wife and run the risk of getting caught using a stolen card might surprise some people. But if you knew wiseguys you would know right away that the best part of the night for Paulie came from the fact that he was getting over on somebody. It wasn't the music or the floor show or the food — and he loved food — or even that he was going out with Phyllis, who he adored. The real thrill of the night for Paulie, his biggest pleasure, was that he was robbing someone and getting away with it.

The book contains other brilliant vignettes of crime fetishists: some who like to shoot, oth-

ers who love to con, and still others whose greatest joy in life is threatening and terrorizing innocents.

Perhaps the most hair-raising stories in the book have to do with the complicity of police and prison officials. Hill learned that if you get caught, things can usually be fixed. Lawyers can keep you out on bond. Testimony and evidence can be tampered with. And if you actually have to go to trial, it is possible to fix the jury. "Everybody reaches the jury," Hill says:

> During jury selection for instance, your lawyer can find out anything he wants to know about a juror — where he works, lives, family status. . . . The "where he works" is what interested me mostly. Where a guy works means his job, and that always means the unions, and that's the easiest place to make the reach.

When Hill was finally convicted of extortion and handed a ten-year sentence in 1972, he found that buying the guards could make jail a reasonably pleasant place. How tough was it? For a few hundred dollars a week, the occupants of the "honor dorm" at Lewisburg could get all the steaks and scotch they wanted. Contrary to myth, though, mobsters do not take care of each other's wives when their buddies get sent to jail; Hill's wife, Karen, had to supply his contraband business from the outside to support herself during his six-year term.

It was through prison smuggling that Hill was first introduced to drugs. When he arrived at Lewisburg, he had never rolled a joint. But ever the entrepreneur, Hill was soon running a pot, coke, and pills franchise inside the prison. He knew this was in strict violation of family rules, and that Vario would be furious; his patron would forgive anything but dope. He had outlawed drugs in his gang, not for moral reasons but because drugs draw heat. Since the world of narcotics trafficking is filled with informers, it is anathema to a closed network of men of honor. As Pileggi puts it, "There are no stand-up guys in the drug trade. It is a multibillion-dollar business in which it is understood that everyone is ratting out everyone else." Like Aniello Dellacroce and John Gotti, Vario knew that it means the end of the old way of doing business, of trusting your friends, of *omerta*.

As soon as he was sprung in 1978, Hill set up a heroin and cocaine dealership at his home in Rockville Centre, Long Island. He was soon selling eight kilos of cocaine a week and using a lot of the stuff himself. It was drug dealing, not his involvement in the sensational $6 million Lufthansa heist, that resulted in his getting busted and agreeing to testify. It was through one of his couriers, someone outside of the clan, that local police obtained a wiretap, and thereby the evidence to turn Hill into an informer himself.

BECAUSE HE'D been using drugs, Vario cut Hill loose. Because his fellow wiseguys had marked him for a hit, Hill asked to stay in prison. Faced with 25 years on a narcotics conspiracy charge, he made a deal with the FBI and entered the Federal Witness Protection Program. This is how the Mafia is being destroyed from within. Hill told the police everything he knew and testified against dozens of his former associates, including his godfather Vario, whom he sent to prison.

Pileggi brings his vivid portrait to a tidy close with a snapshot of Hill and his wife living in a $150,000 neocolonial house "somewhere in America," getting $1,500 a month for his testimony: "the ultimate wiseguy." Unfortunately, that wasn't exactly true by the time Pileggi's book was published. Hill was tossed out of the Witness Protection Program in 1984. Like many of the 4,400 other participants, he simply used his new identity to go on breaking the law. Pileggi is a crime buff, not a policy head, so it's not surprising that he ignores problems of this kind. Yet some analysis is called for. Pileggi merely attempts to let the facts speak for themselves; but sometimes they don't. He should have placed his story in local, national, or international perspective.

• • • •

CAPTION OMITTED

87 Civ. 5582 (RJD)

NOTICE OF CROSS-MOTION

PLEASE TAKE NOTICE that, upon the annexed affidavits of Angelo Petromelis, sworn to March 10, 1988, with exhibits annexed thereto, and of Patricia Eisenberg, Defendants' Statement Pursuant to Local Rule 3(g), and the accompanying Memorandum of Law, and upon all prior papers and proceedings herein, the undersigned, on behalf of the defendants, will cross-move this Court, before the Honorable Richard J. Daronco, United States District Judge for the Southern District of New York, in Courtroom 414 of the United States Courthouse, 40 Foley Square, New York, New York at 9:00 a.m. on the 18th day of April, 1988, for an order pursuant to Rule 56(b) of the Federal Rules of Civil Procedure, granting defendants summary judgment as a matter of law, denying plaintiff's motion for summary judgment, and granting defendants such other relief as the Court deems appropriate.

Pursuant to the parties' stipulation and court order, plaintiff's answering papers, if any, must be served no later than April 11, 1988.

Dated: New York, New York
March 14, 1988

Yours, etc.,
ROBERT ABRAMS
Attorney General of the
State of New York
Attorney for Defendants
By:

/s/

ANNE S. HASKELL
Assistant Attorney General
120 Broadway
New York, New York 10271
(212) 341-2568

To: RONALD S. RAUCHBERG
CHARLES S. SIMS
Proskauer Rose Goetz &
Mendelsohn
300 Park Avenue
New York, New York 10022
Attorneys for Plaintiff

CAPTION OMITTED

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

ANGELO PETROMELIS, being duly sworn, deposes and says:

1. I am the Chairman of the Crime Victims Board ("the Board") and a defendant herein. I have been a member of the Board since June 10, 1976 and I have served as Chairman since September 18, 1987.

2. I am fully familiar with the facts and the practices and policies of the Board described herein. I submit this affidavit in support of defendants' cross-motion for summary judgment and in opposition to plaintiff's motion for the same relief.

A. Statutory Framework

3. Article 22 of the Executive Law is the Crime Victims Compensation Act (the "Act"), a remedial crime victims compensation scheme enacted in 1966, Law of New York ch. 894, which seeks to secure compensation for innocent crime victims and their families regardless of whether the perpetrator of the crime is ever apprehended and brought to justice. Exec. Law § 620 *et seq.* The Act creates the Board as an agency of the State of New York. Under Exec. Law § 623, the Board is charged with providing financial assistance to innocent victims of crime and their families to help pay for, *inter alia*, medical expenses incurred as a result of injuries sustained by a criminal act, essential personal property that has been lost, damaged or destroyed as a direct result of the crime, occupational therapy or similar rehabilitation services, lost earnings and burial expenses. Exec. Law § 631. The Board is also charged, *inter alia*, with advocating "the rights and interests of crime victims in the state before federal, state and local administrative, regulatory, legislative, judicial and criminal justice agencies." Exec. Law § 623(15).

4. The intent of the legislature in enacting the Act is clearly and eloquently set forth:

> The Legislature recognizes that many innocent persons suffer personal physical injury or death as a result of criminal acts. Such persons or their dependents may suffer disability, incur financial hardships, or become dependent upon public assistance. The Legislature finds and determines that there is a need for government financial assistance for such victims of crime. Accordingly, it is the Legislature's intent that aid, care and support be provided by the state, as a matter of grace, for such victims of crime.

Exec. Law § 620.

5. Under the Act, crime victims may apply to the Board for compensation. The Board then determines whether an award should be granted and what amount should be paid. Exec. Law § 631.

6. The Act contemplates compensation of eligible crime victims, but only for certain losses and expenses and within specified limits. Exec. Law § 631. These cash grants are made available out of state and federal funds.

7. The Board becomes subrogated to and the claimant assigns, to the extent of the award, any right or right of action accruing to the victim resulting from the crime with regard to which the award is made. Exec. Law § 634(l)(a). Under Exec. Law § 634(2), acceptance of an award creates a lien in favor of the State on the proceeds of any recovery from the person liable for the injury or death upon which the award was based.

The Son of Sam Law

8. Under Executive Law § 632-a (the "statute"), commonly known as the Son of Sam Law, every person or entity who contracts with any person accused or convicted of a crime in New York State with regard to the reenactment of such crime by way of a movie, book, magazine article, tape recording, phonograph record, radio or television presentation, live entertainment or from the expression of such person's thoughts, feelings,

opinions or emotions regarding such crime, must submit a copy of such contract to the Board and pay over to the Board any money owing to the accused or convicted person.

9. The Board must deposit such money in an escrow account for the benefit of and payable to any victim (or the victim's legal representative) of the convicted person's crime for five years. Exec. Law § 632-a(1). Once the money is escrowed, the crime victims then have five years to file a civil lawsuit and recover a money judgment against the criminal in order to claim on the money held in escrow. If a civil court judgment is obtained, the Board is authorized to satisfy it out of the escrow account. If a crime victim has already received compensation, the State is subrogated to his claims to the extent of those payments.

10. The Board is charged with the enforcement and administration of the Son of Sam Law and has promulgated rules to that effect. 9 New York Code of Rules and Regulations ("NYCRR") Part 526. The rules set forth the Board's responsibility to promptly investigate whether any transaction or other matter falls within the provisions of section 632-a. 9 NYCRR 526.1. Upon completion of its investigation, the Board issues a Proposed Determination and Order with regard to the transaction and informs all parties of their right to a hearing if they make objections within 30 days. 9 NYCRR 526. After all objecting parties have had an opportunity to present evidence and oral argument at an adjudicatory hearing, or if no objections are made, a Final Determination and Order is issued. Any aggrieved person may seek judicial review under Article 78 of the New York Civil Practice Law and Rules with regard to the Board's Final Determination and Order. Exec. Law § 632-a(12); 9 NYCRR 526.1. Any person may also obtain a declaratory ruling from the Board with regard to the application of the Son of Sam Law to any particular contract. 9 NYCRR 525.19.

11. The statute provides for a priority of distribution from the escrow account and assures that the victim will stand ahead of the judgment creditors or other persons claiming through the convicted person, as follows. First, the criminal offender may obtain payment from the escrow account upon a showing that the money will be used for the exclusive purpose of retaining legal representation at any stage of the criminal proceedings. However, in combination with agent's fees, the escrow

account may not be invaded beyond twenty percent. Exec. Law § 632(a)(8). Second, the State is subrogated for awards made by the Board to crime victims and their families under section 634, not to exceed one-half of the civil judgment, if any, obtained by the victim. Civil judgments obtained by crime victims are third in priority. The fourth priority includes all other judgment creditors, including state and local government taxing authorities. Last in line is the criminal offender who is entitled to whatever monies remain after five years. Exec. Law § 632-a(11). The offender retains legal title to the funds in the account until they are paid out to the victim, the state, other judgment creditors, or to other creditors. Should the accused criminal be acquitted, the state is required to pay over immediately the escrowed funds to the formerly accused criminal. N.Y. Exec. Law § 632-a(4).

12. It should be noted that the Son of Sam Law was enacted partially in response to news reports that large sums of money were being offered to serial murderer David Berkowitz, a/k/a the Son of Sam, for the exclusive rights to the story of his crimes. As the author of the bill noted:

> It is abhorrent to one's sense of justice and decency that an individual, such as the forty-four caliber killer, can expect to receive large sums of money for his story once he is captured — while five people are dead, other people were injured as a result of his conduct. *This bill would make it clear that in all criminal situations, the victim must be more important than the criminal.*

Memorandum of Senator Emanuel R. Gold, 1977 New York State Legislative Annual 267 (emphasis supplied).

13. The Legislature reaffirmed section 632-a in 1978 and 1981 with a variety of technical changes to clarify and strengthen the law to insure the original legislative intent. Among the definitional changes implemented were those intended to insure, *inter alia*: that the provisions of the statute apply to the legal representative of the victim as well as to the victim himself; that in order to be entitled to a distribution from the escrow account, the crime victim must recover a judgment *for damages* against the criminal offender; and that on dismissal of charges or acquittal of an accused person, the escrowed funds must be restored to him. In 1986, the statute was amended primarily to correct spelling errors. The New York Legislature has reasserted, through these amendments, the continuing

vitality of the Son of Sam Law and its belief that the law is necessary to assure proper compensation of victims of crimes and to deter criminals from profiting from their criminal acts.

14. Over forty states have enacted Son of Sam laws modeled after section 632-a. Some examples are as follows: Ala. Code § 41-9-80-84 (1983); Alaska Stat. § 12.61.020 (1980); Ariz. Rev. Stat. Ann. § 13-4202 (1978); Cal. Civ. Code § 2224.1 (West 1983); Fla. Stat. Ann. § 944.512 (West 1983); Ga. Code Ann. § (Supp. 1982); § 17-14-30 to 32 (1979); Idaho Code § 19-5301 (1979); Ind. Code Ann. § 16-7-3.7(1-6) (Burns 1983); Iowa Code ch. 910.15 (1982); Ky. Rev. Stat. Ann. § 46.1831-3 (West 1982); Mass. Gen. Laws Ann. ch. 258A, § 8 Michie/Law. Co-op 1980); Mo. Rev. Stat. § 595.045.11 (1985); Mont. Code Ann. § 53-9-104(2)(e) (1983); Neb. Rev. Stat. § 81-1836-1842 (Supp. 1986); Nev. Rev. Stat. § 217.265 (1981); N.J. Stat. Ann. § 52-4B-26 (1983); N.M. Stat. Ann. 31-22-22 (1983); Ohio Rev. Code Ann. § 2743.81 (Anderson 1982); Or. Rev. Stat. § 147.275 (1985); Pa. Stat. Ann. 71 § 180-7.18 (1984): R.I. Gen. Laws § 12-25.1-1 (1983); 1983 R.I. Pub. Laws 328; S.C. Code Ann. § 15-59-40 to 80 (Law. Co-op. Supp. 1982); S.D. Codified Laws Ann. § 23A-28A-l to 14 (Supp. 1982); Tenn. Code Ann. § 29-13-201 to 208 (1980); Tex. Civ. Code Ann. 8309 § 1-18 (Vernon 1980); Wash. Rev. Code Ann. § 7.68.200 to 280 (West Supp. 1982); Wis. Stay. Ann. § 950.04 (2A) (West Supp. 1984).

B. The Proceedings Involving Wiseguy

15. The following facts, ¶¶ 16-33, are taken from the Board's Proposed Determination and Order, dated May 21, 1987, involving the contract between Henry Hill, Nicholas Pileggi and Simon & Schuster regarding the writing and publishing of *Wiseguy*.

16. On or about April 27, 1980 Henry Hill was arrested in Nassau County and was charged in six indictments numbered 50764-50769 with Conspiracy to Sell Drugs.

17. In May 1980, Henry Hill entered into the Federal Witness Protection Program in exchange for his agreement that he would cooperate with various law enforcement agencies.

18. In the interest of justice the six indictments against Henry Hill were dismissed.

19. On August 21, 1981 Henry Hill and Nicholas Pileggi entered into an agreement (the "Agreement") whereby all monies received in the sale of a book length manuscript concerning Hill's life, to be prepared cooperatively by Hill and Pileggi, were to be divided between Henry Hill and Nicholas Pileggi, according to specified percentages for printed page and performance rights. The Agreement further provided that the Sterling Lord Agency was to receive and retain ten percent (10%) of any and all monies payable to Henry Hill and Nicholas Pileggi in respect of said work.

20. On September 1, 1981 Simon & Schuster and Henry Hill and Nicolas Pileggi entered into a contract known as a publishing agreement (the "Contract"). Under the terms of the Contract, Henry Hill and Nicholas Pileggi were named jointly as "Author."

21. The Contract provides for the payment of monies by Simon & Schuster to Author, to be divided between Henry Hill and Nicholas Pileggi, pursuant to the Agreement.

22. The work *Wiseguy* was published in 1985.

23. The work *Wiseguy* is Henry Hill's life story from 1955 when he first became involved with organized crime until May 1980 when he joined the Federal Witness Protection Program. It is a veritable catalog of crimes in which Henry Hill admits to the commission of various crimes and expresses his feelings, opinions or emotions regarding such crimes.

24. The Board first became aware of the possibility of a Contract between Henry Hill and Simon & Schuster in January, 1986.

25. On January 31, 1986, the Board by its Counsel sent certified letters to Simon & Schuster and Nicholas Pileggi requesting that a copy of the Contract and certain other information be turned over to the Board pursuant to Executive Law § 632-a.

26. On May 27, 1986, the Board received a letter from Simon & Schuster, signed by John C. Bender, Group Vice President and General

Counsel, which enclosed a copy of the Contract, a copy of the Agreement between Henry Hill and Nicholas Pileggi, and copies of two letter amendments to the Contract.

27. The correspondence received on May 27, 1986, from Simon & Schuster revealed that payments in the amount of $96,250.00 had already been made to the Sterling Lord Agency for the account of Henry Hill.

28. At present Simon & Schuster is holding approximately $27,958.00 due to be paid to Henry Hill pursuant to the Contract.

29. The Board reviewed the book entitled *Wiseguy*, authored by Nicholas Pileggi pursuant to the Contract and published by Simon & Schuster in 1985, and determined that it contains thoughts, feelings, opinions and emotions regarding crimes committed by Henry Hill as well as his admission to involvement in such crimes.

30. The Board issued its Proposed Determination and Order in respect of *Wiseguy*, dated May 21, 1987, and concluded the following. The Contract between Henry Hill, Nicholas Pileggi and Simon & Schuster, dated September 1, 1981, is of the type regulated by Executive Law § 632-a. As such, a copy of the Contract should have been turned over to the Board in 1981 at the time of execution for the Board's determination as to whether it came within the ambit of the statute. At the very least, a copy of the Contract should have been turned over to the Board prior to October 10, 1984, the date of the first payment by Simon & Schuster to Sterling Lord Agency for the account of Henry Hill. By failing to turn over a copy of the Contract to the Board and by paying $96,250.00 to Henry Hill without seeking any determination from the Board, Simon & Schuster violated Executive Law § 632-a.

31. The Board also determined that all monies paid to Henry Hill or to his representatives under the Contract should have been turned over to the Board to be held in escrow for the victims of crimes committed by Henry Hill and that future payments must be turned over to the Board.

32. The Board also determined that the Sterling Lord Agency as an agent of Henry Hill was a representative under Executive Law Sections 621(6) and 632-a, and was also required to turn over any monies received

or to be received under the Contract on account of Henry Hill, to the Board.

33. Nicholas Pileggi is a co-author and is not a representative of Henry Hill within the meaning of Executive Law § 632-a(1) and as such no monies due or owing him are subject to the mandates of Executive Law § 632-a.

34. The Sterling Lord Agency, pursuant to Executive Law § 632-a(8), made application to the Board for payment of necessary expenses for the production of monies paid into the escrow account to be established by the Board in this case. The Board held an adjudicatory hearing on December 9, 1987, to consider Sterling Lord's application and objections. That application is now pending before the Board.

35. Neither Simon & Schuster nor Henry Hill submitted objections to the Board's Proposed Determination and Order. The determination is not yet final, however, because Sterling Lord filed timely objections to it.

Responses To Plaintiff's Affidavits

36. First: Plaintiff's affiants' statements that the Son of Sam Law deters authors from writing books covered by section 632-a is based entirely on speculation and no author has come forward stating that he will refuse to write a book that may be covered by Section 632-a. *See e.g.*, Korda Aff. ¶¶ 11, 12; Lord Aff. ¶ 14; Hollingsworth Aff. ¶¶ 5, 6; McManus Aff. ¶ 3; Grann Aff. ¶¶ 3, 4. It should be noted that the statute was not designed to deter persons from writing books. Rather, the statute was enacted to prevent criminals from benefiting from their crimes to the detriment of victims by ensuring that money received by a criminal through depiction of the crime or the expression of the criminal's thoughts, feelings, opinions or emotions regarding such crime will first be made available to recompense the victims of that crime. It is notable that when the Board investigated a contract involving the sale of the story of the crimes committed by David Berkowitz (a/k/a the Son of Sam), Berkowitz explicitly expressed his wish that any money derived from the sale be paid to his victims and not to him. *See* letters from David Berkowitz, annexed hereto as Exhibit A.

37. Second: Affiants' statements that certain books previously written, such as *Blind Ambition* by John Dean, *Witness to History* by Armand Hammer, *Conversations With The Enemy* by Robert Garwood, and other books in the process of being written, such as Jesse Jackson's *A Time to Speak*, would not have been or may not be written under the Son of Sam Law, is inaccurate. Korda Aff. ¶¶ 11, 13, 14; Grann Aff. ¶ 5. Section 632-a applies only to books written about crimes committed in New York, not in other jurisdictions, and only to the extent that the particular work seeks to reenact the crime or to express the writer's views about the crime. Most of the books discussed in plaintiff's affidavits are not subject to this law. Even if they were, however, affiants' assertions are completely unsupported. I find it hard to believe that affiants feel comfortable making such an assertion without any evidence that these authors would have refused to write their books without immediate payments. These statements are pure conjuncture based upon plaintiff's assumption that authors will not write books without immediate payment.

38. Third: Sterling Lord's statement that section 632-a precludes his agency from being paid for works which may be subject to its terms (Lord Aff. ¶ 8) and that it forecloses his agency's involvement in any project to which it may apply (Lord Aff. ¶ 9) is an overstatement of the facts. Mr. Lord is presently seeking an order from the Board permitting payment of his fees and that matter is pending before us. Mr. Lord's concern can be addressed if the contract he negotiates with his clients makes it clear that his fee is to be paid separate and apart from any proceeds directed to the writer. Moreover, under the priorities set in section 632-a(11) it is the representatives of the convicted person who aided in the production of the money (*i.e.*, literary agents) who stand first in line to obtain payment from the escrow account. Moreover, Mr. Lord recognizes that there is Board precedent to pay the expenses of a literary agent because the Board granted the request of the Lantz Office, the literary agent of Jean Harris, to pay its commission with regard to the book, *Stranger in Two Worlds*.

39. Fourth: (a) Plaintiff's affiants' statements regarding the circumstances under which *Wiseguy* came to be published appear to be inconsistent with information in an affidavit provided to the Board by Sterling Lord ("Lord Aff. II") sworn to December 4, 1987, and annexed hereto as Exhibit B. Specifically, Michael Korda states that he and the Chairman of Simon & Schuster "conceived the idea" of publishing *Wiseguy*

(Korda Aff. ¶ 4) and that Korda contacted Sterling Lord for assistance in finding an appropriate author for a book about Henry Hill's story. Lord then suggested Nicholas Pileggi, states Korda, and Korda met with Pileggi concerning the proposed project. Korda Aff. ¶¶ 5, 6;

(b) However, Lord stated to the Board that Hill's attorney contacted him directly about having a book written concerning Hill's life story and that Lord "felt that a study of the inner workings of organized crime could be a meaningful and successful book providing insights into an important and special subject." Lord Aff. II ¶ 7. Lord then states that he arranged for Hill's attorney to speak with Pileggi concerning the writing of such a book and that Lord was then advised that Hill and Pileggi decided to work together to prepare and write such book. Lord Aff. II ¶ 8. Lord then states: "[d]eponent [Lord] *thereafter* had several talks over a period of three to four weeks with Mr. Michael Korda, Editor-in-Chief of Simon & Schuster, to attempt to interest Simon & Schuster in the book, and Simon & Schuster *then* advised deponent that it decided to acquire publication rights in the book." Lord Aff. II ¶ 9 (emphasis supplied).

(c) Accepting Sterling Lord's statements to the Board, plaintiff's argument that no book would be written unless Simon & Schuster paid Hill for his story is questionable. The plain fact is that Hill (through his agent, Sterling Lord) like any other vendor of a commercial commodity for sale approached plaintiff as a potential buyer of his goods (the proposed book). Simon & Schuster merely had to accept or reject the commodity offered at the vendor's terms of the sale. In contracting for Hill's goods, Simon & Schuster was duty bound to incorporate the mandates of Section 632-a into the terms of sale.

40. Fifth: (a) To the extent plaintiff's affiants also state that Henry Hill would not have cooperated with Nicholas Pileggi absent immediate payment, I wish to point out that subsequent events appear to me to raise a serious question as to the accuracy of this assumption. Specifically, I annex hereto as Exhibit C, a series of news articles and news summaries which demonstrate the following:

(b) Hill appeared on the ABC television news program, 20/20 in 1986 and, wearing a full beard as a disguise, discussed his lengthy career in organized crime. According to newspaper reports, a Martin Lewis of Redmond, Washington, urged his neighbors to watch that television program and apparently, they readily recognized him despite the

disguise. After Lewis was arrested on drug charges, his neighbors told reporters that Lewis had bragged "for years" that he was really Henry Hill of *Wiseguy* fame and, therefore, his arrest came as no surprise to them.

In sum, these materials demonstrate that Hill was eager to capitalize on his notoriety.

41. Sixth: I also wish to point out that plaintiff does not object to any disincentives to authors, such as Henry Hill, that might exist under other laws pertaining to enforcement or satisfaction of judgments. Specifically, Gerald E. Hollingsworth, the General Counsel of Random House, states in his affidavit, with regard to the successful effort by the estate of Richard Adan to attach royalty payments to Jack Abbott's book, *In the Belly of the Beast*, that "[w]e do not contend that crime victims who obtain tort judgments are prohibited by the First Amendment from obtaining satisfaction from the proceeds of expressive activity." Hollingsworth Aff. ¶ 9. I find it significant that plaintiff's affiant finds no First Amendment impediment concerning New York's general tort recovery provisions but objects to the Son of Sam Law which has as its primary purpose making available to victims funds to satisfy tort law judgments.

42. Seventh: Plaintiff's affiants also state that Section 632-a has the effect of allowing the Board to become an editorial reviewer of the content of published works or that it requires editors to delete material from books that may be covered by the statute. *See, e.g.*, Korda Aff. ¶ 15; McNamara Aff. ¶ 12; Constantine Aff. ¶ 3. To the contrary, the Board has no role in the content or subject matter of books other than to determine whether a particular work comes within the objective standards of the statute, *i.e.*, whether it reenacts the crime or expresses the criminal's thoughts, feelings or emotions about the crime. Once a work is covered, editors have no obligation to delete material from it — their only obligation is to turn over the payments to the Board for deposit in an escrow account.

43. Eighth: Plaintiff's affiants' assertions that the statute is vague is simply incorrect. *See, e.g.*, Korda Aff. ¶ 17; McNamara Aff. ¶ 13. Any publisher in the business of negotiating for the publication of a book by or about a criminal offender and his crimes must know whether the contract and the work contain any "reenactment of [the] crime . . . or the [criminal's] thoughts, feelings, opinions or emotions regarding such

crimes[.] Exec. Law § 632-a. This is an objective standard that we believe is easily ascertainable. To the extent a party has a question in a particular case, the Board has also adopted a mechanism to permit entities to obtain rulings from us concerning the applicability of a particular contract. 9 NYCRR 525.19; 526.1.

WHEREFORE, your deponent respectfully requests that defendants' cross-motion for summary judgment be granted in its entirety.

/s/

ANGELO PETROMELIS

SUBSCRIPTION OMITTED

January 29, 1979

State Supreme Court Justice
Honorable Carmine Ventieri
360 Adams Street,
Brooklyn, New York 11201

Dear Judge Ventieri,

I just read in the Rochester, New York newspaper that a movie and book is being written about me. No doubt I'm once again the last to know because of all the crooked deals that must be worked out beforehand.

I'm advising you that I am not going to cooperate in anyway with the writer or movie makers in this venture. I have no interest in such nonsense and if Hollywood wants to glorify my name and what I've done then let them.

Maybe after some disturbed person see's the movie he too will go out and kill some people then someone will make a movie about him, then another and another.

Secondly, I want to tell you that I do not wish to receive one single penny from any profits that will be made. I want nothing except to be left alone and spend the rest of my life in prison until I die, which will be soon because I have enemies. However, I'm not the least bit concerned.

Judge Ventieri, sir, I am also going to beg to you that you do not let the Moskowitz's or the Violante's make all the profits from the deal. Please, make sure that Joanne Lomino also gets a share of the royalties. Don't forget that she is more handicapped as a result of my actions then all the others combined. Please Make sure that everything is split fairly and don't let the crooked ones like the Moskowitz's get it all.

I would strongly desire that all the proceeds if possible go to the Victims Crime Compensation Board.

One last point please. I want you to realize that any story about me would be somewhat fictional since I made up the story about the

"demons". It wasn't really true. I'm the real "demon". I realize this now. However, I don't suppose it matters because people want to read something absurd and Hollywood knows it would sell better. I just thought I would let you know and I hope you will consider everything I've said.

Most Sincerely,

/s/

David Berkowitz
78-A-1976
Box 149
Attica, New York 14011

THE FOLLOWING IS A TRANSCRIPTION
OF A HANDWRITTEN LETTER

Dear Mr. Fisher,

At first I didn't want to correspond with you or anyone from the news media ever again. However, do to circumstances beyond my control I need you at this time for the purpose of reaching and having contact with the outside world. At this time I have no contact with the press and my lawyers and Doris Johnsen (conservator) have proved to be undependable and unconcerned about my welfare. They only have monetary interests at stake.

I sent a letter to Judge Ventiera expressly stating my personal views of the book-movie issue. I don't believe, however, that he is truly interested in my desires or interests.

Please note the inclosed letter dated Jan. 29, 1979, addressed to Judge Ventiera. An exact copy of this letter was sent to the judge to be read into the court records. I doubt if this was done. If it was, then I give him my apologies.

I believe at this time that Doris Johnsen and my lawyers have set up an underhanded, un-kosher deal which will make them wealthy while everyone else gets poorer. I cannot go into full details now.

Please note that the letter to Judge Ventiera completely expresses my desire and feelings on the book-movie venture.

I have also inclosed two letters with regards to my appeal. I have asked that all appeals be withdrawn, however, I feel that my lawyers may not turn these over to the proper authorities.

I wish nothing to do with Doris Johnsen or the deals that are being worked out.

I have lost contact with the outside world and not of my own choosing — please understand. I need you to get this letter out to the media or concerned parties. I am asking you to be my voice.

If you double cross me in any way, our contact will be permanently severed. I will see to it!

Doris Johnsen was appointed my conservator because Dr. Schwartz claimed I was incompetant and insane. Nothing could be further from the truth. Both my lawyers and Johnsen are not properly representing me. Technically they are suppose to and claim to, but in reality they are representing only themselves and their wishes. I repeatedly told them that I want the money to go to the Victims Crime Compensation Board and *not* to the conservatorship.

You wrote in your statement that I requested to be kept under constant surveillance. This is absurd. I never said this. I have a good job, I do my work and I move about as I please.

I realize that you will profit from this letter both money wise and with noteriety but I give you permission to print this letter.

PS: If you come through by delivering this letter to the proper people, then more letters will follow within time.

Sincerely,

/s/

David Berkowitz
78-A-1976
Box 149
Attica, N.Y. 14011

These inclosed letters must also be sent to the Media
INCL.
1-Remove Appeal 12/29/78-Notorized Official
2-Remove Appeal 1/5/79-Notorized Official
3-Letter to Judge Ventiera 1/29/79

Before the
STATE OF NEW YORK CRIME VICTIMS BOARD

In the Matter of

A Contract Between

HENRY HILL and NICHOLAS PILEGGI

and SIMON & SCHUSTER

AFFIDAVIT IN SUPPORT OF APPLICATION PURSUANT TO SECTION 632a(8)

STATE OF NEW YORK)
) SS.
COUNTY OF NEW YORK)

STERLING LORD, being duly sworn, deposes and says:

1. That deponent resides at 30 East 65th Street, New York, New York 10021.

2. That at the time of development and initial exploitation of the book entitled "WISEGUY" deponent was the President and Chief Executive Officer of The Sterling Lord Agency, Inc., a literary agency with offices at 660 Madison Avenue, New York, New York 10021-8441, and that since February 1, 1987 deponent has been and is the Chairman of Sterling Lord Literistic, Inc., the successor agency to The Sterling Lord Agency, Inc. with offices now located at One Madison Avenue, New York, New York 10010.

3. That deponent makes this Affidavit in support of the application of The Sterling Lord Agency, Inc. and its successors and assigns pursuant to Section 632(a) 8 of the New York Executive Law.

4. That deponent has been a literary agent and an agent for authors and others in the fields of print publication, television, motion pictures and the legitimate theatre since 1951, a period of more than thirty-six (36) years, as head of The Sterling Lord Agency, Inc. between 1951 and 1986 and since February 1, 1987 as Chairman of Sterling Lord Literistic, Inc., the successor agency to The Sterling Lord Agency, Inc.

5. That deponent and his agency have represented such authors as Jack Kerouac, Ken Kesey, Pierre Salinger, Nicholas Pileggi, Erica Jong, Howard Fast, David Wise, Joe McGinniss, Stan and Jan Bernstein, Walter Lord and Dick Schaap.

6. That deponent is a member of the Society of Authors Representatives, a major organization of literary agents, and that deponent served as Treasurer of such Society for thirteen (13) years.

7. That early in 1981 deponent was contacted by Robert Simels, Esq. on behalf of Mr. Simels' client Henry Hill. Mr. Simels stated that Mr. Hill had been given immunity from prosecution in connection with his testimony and cooperation with prosecutors concerning several criminal cases including the widely publicized robbery of the Lufthansa airline facility at John F. Kennedy Airport in New York City. Mr. Simels advised deponent that Mr. Hill was interested in having a book written concerning Mr. Hill's life story and that Mr. Hill was seeking a writer. Deponent felt that a study of the inner workings of organized crime could be a meaningful and successful book providing insights into an important and topical subject.

8. That deponent arranged for Mr. Simels to speak with Nicholas Pileggi, an established writer and a client of deponent's agency, concerning the writing of such a book. That deponent was then advised that Mr. Hill and Mr. Pileggi desired to work together to prepare and write such book.

9. That deponent thereafter had several talks over a period of three to four weeks with Mr. Michael Korda, Editor-in-Chief of Simon & Schuster, to attempt to interest Simon & Schuster in the book, and Simon & Schuster then advised deponent that it desired to acquire publication rights in the book.

10. That deponent on behalf of Messrs. Pileggi and Hill then negotiated the terms of a publication agreement with Simon & Schuster which resulted in the written and executed publication agreement dated September 1, 1981 (Exhibit "A" of the Proposed Determination and Order).

11. That since 1981 deponent and his staff have performed all of the customary and significant tasks and activities of literary agents in connection with the development, preparation and exploitation of the book and various rights in the book, including but not limited to advice to the

authors concerning both creative and business matters; review of and comments on drafts of manuscripts; liaison with correspondent agents in foreign countries concerning possible print publication arrangements for various other countries; solicitation of first serialization magazine licensees; negotiation for publication of serialized portions of the book by New York Magazine; solicitation of potential licensees of motion picture and television rights in the book; review of promotional and advertising plans; and related telephone calls, correspondence, meetings, conferences and negotiations.

12. That the agency commissions provided for in the written and executed agreement between Nicholas Pileggi and Henry Hill dated August 21, 1981 (Exhibit "B" of the Proposed Determination and Order) are the commissions then and now customarily charged by deponent to the clients of his agency; that such commissions are reasonable; and that to the best of deponent's knowledge, such percentage commissions are the same as (and in some cases less than) those charged by the major literary agencies.

13. That deponent does not anticipate that hereafter deponent will incur any significant expenses to be chargeable to or reimbursed by Messrs. Pileggi and Hill except for the required applicable commissions.

14. That the publication agreement with Simon & Schuster was obtained solely by and as a direct result of the efforts of deponent, deponent having initially brought the project to the attention of Simon & Schuster and having negotiated all terms of such publication agreement.

15. That Sterling Lord Literistic, Inc., as successor to The Sterling Lord Agency, Inc., now has and will continue to have the continuing regular responsibilities of a literary agency to monitor the publication and sales of the book by Simon & Schuster and other publishers and to seek to arrange for and to negotiate terms for the exploitation of the book and various rights in the book in all media throughout the world.

16. That literary agents perform many vital functions and duties in connection with the organization, development, writing, publication and exploitation of books and rights therein in various media, and if the Board determines that normal and customary agency commissions are not a necessary expense in the production of income which the agent is entitled to receive, no literary agent is likely to agree to represent any convicted

felon in connection with literary works or other materials where the proceeds may be payable to the escrow fund of the Crime Victims Board.

17. That it is deponent's understanding that in the recent Matter of A Contract Between JEAN HARRIS and MACMILLAN, INC., the Final Determination and Order of the Board provided that the agency involved in that matter, The Lantz Office, was entitled to retain past and future commissions based on monies payable to Jean Harris or her representatives or assigns for the production of the literary work there involved and arising out of the publication of such work or the sale, lease, license or other disposition of rights therein and thereto; that deponent believes that the application in this matter relates to a substantially identical set of relevant facts and circumstances; and that deponent believes that the determination of the Board in such recent other Matter is a clear precedent for a similar determination in this matter.

/s/
STERLING LORD

SUBSCRIPTION OMITTED

THE FOLLOWING EXCERPTS ARE REPRODUCED FROM ARTICLES PUBLISHED MAY 9, 1987 AND MAY 22, 1987 IN THE *JOURNAL-AMERICAN* [NEWSPAPER — WA]

MAFIA MOBSTER BRAGGED ABOUT PAST

Redmond neighbors aware of 'Wiseguy'
By **Monte Enbysk** and **Mike Ullmann**
Journal-American Staff Writers

Residents of a pleasant subdivision in north Redmond said Friday their neighbor Martin Lewis has bragged for years that he is really Henry Hill, the Mafia mobster whose story was told in the best-selling book *Wiseguy*.

And local police and drug-enforcement officials say they believe him.

After Lewis, 43, was arrested for investigation of drug charges at a downtown Redmond restaurant last week, he told authorities he is Hill.

Lewis, who has lived on the Eastside for at least five years, is being held in custody without bond following a U.S. magistrate's determination Thursday that there was enough evidence to charge him with conspiracy and possession of cocaine with intent to deliver.

Travis Kuykendall, assistant special agent in charge of the Drug Enforcement Administration office in Seattle, said Lewis told agents that he had been relocated to Redmond by the federal witness protection program.

Assistant U.S. Attorneys Kenneth G. Bell said Friday he was unable to confirm or deny whether Lewis had participated in the witness program and it will take two to three weeks to determine whether Lewis' fingerprints match Hill's. But, he said, "it is our belief that he is the Henry Hill portrayed in the book, *Wiseguy*."

Residents of the 48-home Valley Estates subdivision, next to Lewis' rustic ranch house, say they've believed Lewis' story for some time.

"He doesn't hold anything back. He brags about his book, and about how rich and famous he's going to be," said Yvonne Bakker, an 18-year-old model who lives in the subdivision, who keeps her horse in the Lewis'

stables and who considers herself the best friend of Lewis' 18-year-old daughter.

"I feel so bad for the family. They don't deserve what's going on. Whatever happens to him is his problem," Bakker said of Lewis.

Many neighbors said they've read *Wiseguy*, which describes Hill's life as a low-level Mafia mechanic who took part in murders and had knowledge of the 1978 Lufthansa robbery in New York. And a year ago, when Henry Hill, wearing a fake beard, appeared on the nationally televised ABC news program *20/20*, Lewis told some of the neighbors to be sure to watch the show.

Yvonne Bakker and her mother, Monique, recorded the program on their video-cassette recorder.

"You can tell it's him (Lewis) especially by his voice," Monique Bakker said.

"Even though he was disguised with a fake beard, it was pretty obvious it was him," said Kirby McManus, whose house is located along the long driveway leading to Lewis' home.

McManus said he was a bit shocked to hear the latest news about his neighbor, but not entirely. "It seemed to fit in because of the way these people live. He obviously didn't work . . . There seemed to be a lot of people coming and going from the house, in various states of reality."

McManus said the family — Lewis, his wife and daughter — made numerous acquaintances in the neighborhood but didn't usually participate in neighborhood activities.

Lewis' wife is a hairdresser in Redmond, neighbors said.

According to *Wiseguy*, Henry Hill was a mobster in the Queens section of New York City for 25 years, gradually working his way up the ladder with repeated success in pulling off crimes.

Hill was arrested in a narcotics conspiracy in 1980. At the time, federal prosecutors also wanted to talk with him about the $6 million Lufthansa robbery at John F. Kennedy International Airport, the largest successful cash robbery in U.S. history.

Nicholas Pileggi, who wrote *Wiseguy* with Hill's help, said Hill ultimately decided to join the Witness Security Program when he learned old associates planned to kill him.

Under the federal Witness Security Program, government witnesses whose lives are endangered are given second chances in life in return for their testimony. They are relocated, given new names, even aided in finding new jobs and careers, according to Bill Dempsey, spokesman for the U.S. Marshals Service headquarters in McLean, Va.

He would neither confirm nor deny whether Hill is, or has been, in the program. "We're hamstrung; we cannot comment on individual cases," Dempsey stressed.

Redmond police have never been officially told whether the Justice Department secretly moved Hill to the Eastside, said Chief Steve Harris, although "we've had some information for a long time that it was probably him."

"He's bragged to his whole neighborhood that he is Henry Hill, that he is the guy in the book, *Wiseguy*."

Harris said it is his understanding that the Justice Department does not tell local authorities about relocated witnesses, nor would he expect such notification.

"I think they did exactly what they're supposed to do, to keep him unidentified, and they did that," he said. "I suppose if he had been murdered then I would have gotten a phone call to tell me who he really was."

The police chief said Redmond officer, who arrested Lewis repeatedly for traffic violations, were suspicious of him. "We always thought he was doing a lot of things, but we never come up with much on him," Harris said.

By whatever name, Lewis hasn't exactly been a good neighbor since he moved to the Eastside.

"The whole neighborhood's been upset at him," said Chief Harris.

Court records show Martin T. Lewis pleaded guilty in 1985 to a charge of second-degree burglary, and has been convicted of or pleaded guilty to

at least 10 traffic-related offenses in the last five years, including driving while intoxicated and negligent driving.

At the time of his arrest last week, Lewis was awaiting a July 8 jury trial in Redmond's Northeast District Court on a charge of being a habitual traffic offender.

Part of his burglary record has been sealed by King County Superior Court for reasons that could not be determined Friday afternoon. The Lewis listed in the court records has the same birth date — June 11, 1943 — as does Henry Hill.

Redmond police and the multi-agency Eastside Narcotics Task Force were made aware of the federal investigation, and Redmond police provided assistance, according to the agent.

PURPORTED MAFIA FIGURE INDICTED

By **Monte Enbysk**
Journal-American Staff Writer

A Redmond man who claims he is a Mafia informant whose life was chronicled in the best-seller, *Wiseguy*, has been indicted by a federal grand jury on two counts of trafficking cocaine.

According to the U.S. Attorney's office, the indictment against Martin Todd Lewis, 43, and two other Eastside men was returned in U.S. District Court in Seattle on Wednesday.

Court records state that Lewis is also known as Henry Hill, the former Mafia mobster in New York City who entered the federal Witness Security Program, was relocated and given a new identity.

The federal Drug Enforcement Administration said early this month it would prove whether or not Lewis is Hill by comparing fingerprints. Results of the fingerprint tests have not been received by the DEA office in Seattle, a spokeswoman said Thursday.

Lewis' arraignment is scheduled for 9 a.m. next Thursday before federal magistrate John Weinberg. He is being represented by Seattle attorney Allan Ament.

Lewis and two others, Jose Fernando Siejo-Borgo of Redmond and Karl Alden Wing of Bothell, were named in the same indictment for what the grand jury alleged was a "conspiracy" to distribute cocaine.

The three are being held by federal authorities.

From at least April to May 1, the trio "did conspire with each other and with other persons known and unknown to the grand jury to distribute cocaine," alleges the first count of the indictment.

According to the second count, the three on May 1 "knowingly and intentionally did distribute ... and did aid and abet in the distribution of cocaine." The grand jury further alleges conspiracy charges.

Lewis was arrested the evening of May 1 at a downtown Redmond restaurant.

Court documents charge that Lewis arranged to sell a pound of cocaine to an informant. The cocaine was allegedly delivered to the informant and an undercover federal Drug Enforcement Administration agent by Siejo-Borgo and Wing.

The two delivery persons were immediately taken into custody after giving the agent 11.5 ounces of the drug outside a Kirkland restaurant for $10,400. Lewis was arrested later.

During an interrogation, Lewis told DEA agents he is Hill — who was featured last year on the ABC-TV news program *20/20*. Hill, wearing a fake beard for disguise, talked about his rise to prominence during a 25-year career in organized crime, and why he left the mob.

After being arrested in 1980 for drug charges, Hill said federal prosecutors wanted to talk to him about the $6 million Lufthansa robbery at John F. Kennedy International Airport.

Hill said he decided to join the Witness Security Program about that time because he learned his old associates were out to kill him. He said if he was ever located by Mafia leaders, "I'd be a dead man."

Lewis and his wife, a Redmond hairdresser, and 18-year-old daughter have lived in a ranch-style house just north of the Redmond city limits since 1982. Neighbors say it is common knowledge among them that Lewis is Henry Hill because he has bragged a great deal about his past and because he looks and talks exactly like the man interviewed on *20/20*.

Lewis has a long list of traffic-related offenses locally and has also been charged with burglary.

The U.S. marshals office, which operates the Witness Security Program, will not confirm or deny whether Lewis is Hill. One federal source who did not want to be identified said he seriously doubted whether Hill would remain a federally protected witness after revealing his life story in a book.

STATE OF NEW YORK :
COUNTY OF KINGS :

PATRICIA EISENBERG, being duly sworn, deposes and says:

1. I reside at 7600 Shore Front Parkway, Rockaway Beach, New York, 11692.

2. In 1970, I was married to William Bentvana, a/k/a Billy Batts.

3. On or about December 13, 1970, my husband left our marital residence in Valley Stream, New York, and was never seen nor heard from again.

4. After reading the book, *Wiseguy*, I learned for the first time in fifteen (15) years what had happened to my husband. The revelations in the book were both shocking and distressing.

5. Our sons and I have suffered financially and emotionally from the crime described by Henry Hill in his book, *Wiseguy*. We intend to make a claim individually and on behalf of my husband's estate for monies obtained by the New York Crime Victims Board.

/s/
PATRICIA EISENBERG

SUBSCRIPTION OMITTED

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

SIMON & SCHUSTER, INC.,

Plaintiff,

— against —

MEMBERS OF THE NEW YORK STATE CRIME VICTIMS BOARD, GENNARO FISCHETTI, GEORGE L. GROBE, JR., DIANE McGRATH, and ANGELO PETROMELIS, individually and in their official capacities,

Defendants.

87 Civ. 5582 (JFK)

JUDGMENT

Both parties having moved for summary judgment, pursuant to F.R.Civ.P. 56, and the said motions having come before the Honorable JOHN F. KEENAN, U.S.D.J., and the Court thereafter on October 26, 1989, having handed down its opinion and order (#65087); denying plaintiff's motion for summary judgment; granting defendant's cross-motion for summary judgment; dismissing the complaint and removing the case from the active docket of the Court, it is,

ORDERED, ADJUDGED AND DECREED: That plaintiff's motion for summary judgment be and it is hereby denied, and it is further,

ORDERED, that defendant's cross-motion for summary judgment be and it is hereby granted, and it is further,

ORDERED, that the complaint be and it is hereby dismissed, and it is further,

ORDERED, that the case be and it is hereby removed from the active docket of the Court.

DATED: New York, New York
October 27, 1989

/s/
[Raymond R. Burghardt]
Clerk

THIS DOCUMENT WAS ENTERED ON THE DOCKET ON 10/30/89

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of the Application of CHILDREN OF BEDFORD, INC. and MACMILLAN, INC.,

Petitioners,

For a Judgment pursuant to Article 78 of the Civil Practice Law and Rules Annulling the Determination entered October 26, 1987 declaring the ordering that a certain book entitled "Stranger in Two Worlds" written by Jean Harris is subject to Executive Law Section 632-a,

— against —

ANGELO PETROMELIS, GENNARO A. FISCHETTI, GEORGE L. GROBE, JR., and DIANE McGRATH, constituting the Crime Victims Board of the State of New York,

Respondents.

ANSWERING AFFIDAVIT

Index No. 29562/87

STATE OF NEW YORK)
)
COUNTY OF ALBANY)

LORRAINE FELEGY, being duly sworn, deposes and says:

1. I am an attorney duly licensed to practice in the courts of New York State and am Counsel to the New York State Crime Victims Board located at 97 Central Avenue, Albany, New York 12206.

2. I am fully familiar with the facts set forth herein and I submit this affidavit in support of respondents' answer to the petition in the above proceeding.

Statutory Authority

3. The Crime Victims Board (the "Board") is an agency of the State of New York and was established pursuant to Article 22 of the Executive Law (Executive Law Section 620 *et seq.*), to provide, *inter alia*, financial assistance to innocent victims of crime and their families.

4. The intent of the legislature in enacting Article 22 is clearly and eloquently set forth in the statute:

> The Legislature recognizes that many innocent persons suffer personal physical injury or death as a result of criminal acts. Such persons or their dependents may suffer disability, incur financial hardships, or become dependent upon public assistance. The Legislature finds and determines that there is a need for government financial assistance for such victims of crime. Accordingly, it is the Legislature's intent that aid, care and support be provided by the state, as a matter of grace, for such victims of crime.

Executive Law Section 620.

5. Under Article 22, crime victims may apply to the Board for compensation. The Board then determines whether an award should be granted and what should be paid. Executive Law Section 631.

6. The Board, in conjunction with its compensation program, has certain subrogation claims and assignment rights arising from suits involving a victim who was awarded financial assistance by the Board. Executive Law Section 634.

7. The Board is also charged with the enforcement and administration of Section 632-a, commonly referred to as the "Son of Sam" Law.

8. Under Section 632-a(1), every person or entity who contracts with any person accused or convicted of a crime in New York State, as defined in Section 632-a(10)(b), with respect to the reenactment of such crime, by way of a movie, book, magazine article, tape recording, phonograph record, radio or television presentation, live entertainment of

any kind or from the expression of such accused or convicted person's thoughts, feelings, opinions or emotions regarding such crime, must submit a copy of such contract to the Board, and pay over to the Board any moneys owing to the accused or convicted person. The Board must deposit such moneys in an escrow account for the benefit of and payable to any victim (or the victim's legal representative) of the accused or convicted person's crime. Once the moneys are escrowed the victim must bring a civil action and recover a money judgment for damages against the criminal before he can claim on the moneys held in escrow. If and when the victim obtains a civil court judgment the Board must satisfy the judgment with the funds escrowed.

9. The Son of Sam Law creates a new in rem cause of action in that it allows a victim to bring an action in a court of competent jurisdiction within five years of the establishment of an escrow account. After weighing the psychological and financial costs against the negligible assets of their often judgment proof assailants, many victims will choose not to commence a civil action based upon the acts constituting the crime within the applicable short statute of limitations because of its economic infeasibility. Section 632-a thereby provides a victim with a reasonable period of time, to seek civil redress once his assailant has acquired assets from which a victim's judgment can be satisfied.

10. Pursuant to Executive Law Section 632-a(4), upon a showing by any convicted person that five years have elapsed from the establishment of such escrow account and further that no actions are pending against such convicted person to recover moneys held pursuant to Executive Law Section 632-a, the Board is required to pay over any moneys in the escrow account to such person or his legal representative.

11. Priority of claims on moneys in the escrow account is established by Executive Law Section 632-a(11) and is as follows:

(a) Payments ordered by the Board or a court pursuant to Section 632-a(8);

(b) Subrogation claims of the State pursuant to Section 634 in an amount not exceeding one-half of the net amount of the civil judgment obtained by a victim which is payable directly to the victim from the escrow account;

(c) Civil judgments of the victims of the crime;

(d) Other judgment creditors or persons claiming moneys through the person accused or convicted of a crime who present lawful claims, including state or local government tax authorities;

(e) The person accused or convicted of the crime.

12. The priorities of claims established by Section 632-a(8) again recognizes the legislative intent of this statute to protect the criminal's victim by ensuring that the victim will stand ahead of the judgment creditors or other persons claiming through the convicted person, and is a realistic recognition that, but for the crime, funds may not be available against which to levy. Under the priorities set forth in Section 632-a(11) it is the representatives of the convicted person who aided in the production of the moneys (*i.e.*, literary agents) who stand first in line to obtain payment from the escrow account. Second in line to claim moneys in the escrow account is the Board in cases where it has provided financial assistance to a victim who later obtains a civil judgment. The State is subrogated to the victim's rights against the criminal and when a civil judgment is obtained by the victim, a portion of the moneys paid out by the State are returned to the State so that they are available to assist other crime victims. Without the Son of Sam Law, the State would merely stand in line with other creditors of the criminal in attempting to retrieve moneys due it.

13. In order to carry out its statutorily mandated duties as set forth in Section 632-a, the Board has adopted rules and regulations contained in Part 526 of Title 9 of the New York Codes, Rules and Regulations. See Exhibit "A" attached hereto. Under these Board rules (9 NYCRR 526.1), the Board Chair has a duty "upon receipt of information concerning a transaction which may be subject to the provisions of Section 632-a of the Executive Law," to "promptly have conducted an investigation to determine whether the proposed contract or other matter falls within the provisions of Section 632-a of the Executive Law." Upon completion of such an investigation and review of the specific language of the contract, the Board then issues a written Proposed Determination and Order with regard to the contract. The Proposed Determination and Order becomes final thirty (30) days after service if no objections are raised by an

interested party. If objections are raised, hearings are held and a Final Determination and Order is thereafter issued.

14. The statute and regulations of the Board provide ample means by which a publisher may obtain a determination from the Board regarding the applicability of Section 632-a to a particular contract. Those procedures include a request for a declaratory ruling (9 NYCRR 525.19) by which a publisher may obtain an binding ruling based upon an actual or hypothetical set of facts, a request for an advisory opinion of Counsel based upon a stipulated set of facts or circumstances, or a request for a formal Proposed Determination and Order based on submission of an actual contract and related information (9 NYCRR 526.1).

BACKGROUND

The following facts are taken from information contained in the Board's file in this matter.

15. In 1981, Jean Harris was convicted of Second Degree Murder arising out of the killing of Dr. Herman Tarnower at his home in Westchester County, New York. She is presently serving a term of fifteen (15) years to life at Bedford Hills Correctional Facility for that crime.

16. Macmillan, Inc. is a for-profit corporation doing business in New York State with offices located in New York City and is in the business of publishing books.

17. The Lantz Office is a literary and talent agency with offices located in New York City.

18. On March 19, 1985, Macmillan, Inc. and Jean Harris entered into a Contract known as a publishing agreement (hereinafter the "Contract") a copy of which is annexed hereto as Exhibit "B".

19. Under the terms of the Contract, Jean Harris (called the "Author" in the Contract) sells to Macmillan, Inc. the exclusive publishing rights to a work provisionally entitled *JEAN HARRIS: Autobiographical Reflections*, to be authored by Ms. Harris.

20. The Contract appoints The Lantz Office as the sole and exclusive agent for Jean Harris with respect to all rights under the Contract and authorizes the payment to The Lantz Office of a 10% commission of all moneys due Jean Harris under the Contract. See Supplementary Page One of the Contract, sub-paragraph (f).

21. The Contract further provides for the payment by Macmillan, Inc. to Jean Harris of an advance of One Hundred Thousand Dollars ($100,000), with payment of Fifty Thousand Dollars ($50,000) to be paid at the signing of the Contract and Fifty Thousand Dollars ($50,000) upon delivery of a manuscript to Macmillan, Inc. In addition the Contract provides for royalties to be paid to Jean Harris based upon the number of copies of the book sold. See the Contract at Paragraph I.

22. On or about March 19, 1985, the first installment of the advance under the Contract of $50,000 was paid by Macmillan, Inc. to Jean Harris through The Lantz Office which retained $5,000 as its commission.

23. In early September, 1985, a manuscript by Jean Harris was delivered to Macmillan, Inc. pursuant to the Contract. The original deadline of June 1st, 1985 called for in the Contract had been extended by Macmillan, Inc.

24. The Board first learned of the existence of the Contract in early February, 1986, based on press reports originating from the Macmillan, Inc. pre-publication publicity department which characterized the book by Jean Harris, now titled *Stranger in Two Worlds* as "the crime of the century - by a woman convicted of committing it." A copy of the press reports appearing on February 9, 1986 is annexed hereto as Exhibit "C".

25. On February 10th, 1986, the Board by its Counsel sent a certified letter to Macmillan, Inc. requesting that a copy of the Contract and certain other information be turned over to the Board pursuant to Section 632-a. A copy of such letter is annexed as Exhibit "D".

26. On February 13th, 1986, the Board received a letter from Macmillan, Inc. dated February 11, 1986, signed by Jeffrey S. Goldstein, Publishing Counsel, which enclosed a copy of the Contract annexed hereto as Exhibit "B". Macmillan, Inc. admits that it was aware of Executive

Law Section 632-a when it entered into the Contract with Jean Harris on March 19th, 1985, and states that it did not turn over a copy of the Contract to the Board or pay the advance due Jean Harris to the Board as provided by Executive Law Section 632-a(1), because it believed that the book to be produced by Jean Harris would be about "the plight of children with mothers behind bars" and would not contain a "re-enactment" of the crime for which Jean Harris was convicted or the "expression" of her "thoughts, feelings, opinions or emotions regarding such crime." See copy of letter of Jeffrey Goldstein dated February 11, 1986 annexed hereto as Exhibit "E".

27. By letter of Counsel dated February 14, 1986, the Board requested of Macmillan, Inc. a copy of the book prepared by Jean Harris under the Contract. A copy of such letter is annexed hereto as "F".

28. By certified letter of Counsel dated February 20th, 1986, the Board also requested The Lantz Office to turn over copies of any contracts with Jean Harris, a copy of any work produced under such contract and certain other information pursuant to Executive Law Section 632-a. A copy of such letter is annexed hereto as Exhibit "G".

29. The Lantz Office by letter of its attorney, Barry Lee Cohen, Esq., dated March 6, 1986, stated that its entire contractual agreement is contained in the Contract, a copy of which is annexed hereto as Exhibit "B", and further stated that it received $50,000 from Macmillan, Inc. under the Contract, paid $45,000 to Jean Harris and retained $5,000 as its commission. A copy of said letter is annexed hereto as Exhibit "H".

30. Macmillan, Inc. by letter dated March 6, 1986, signed by Jan Friedman Constantine, Associate General Counsel, declined to turn over a copy of the manuscript of the Jean Harris book until its publication date on the grounds that it feared premature release of the manuscript material could permit another competing publication to "scoop" the material contained in the manuscript. A copy of this letter is annexed hereto as Exhibit "I". After issuance of a Subpoena Duces Tecum by the Board on May 1st, 1986, for said manuscript, the filing of a Motion to Quash said subpoena by Macmillan, Inc. and the entry of a Stipulation of Settlement by the Board and Macmillan, Inc., on June 25, 1986 the Board finally received from Macmillan, Inc. a complimentary copy of the book by Jean

Harris. This work entitled *Stranger in Two Worlds* was published by Macmillan, Inc. in June, 1986.

31. By letter dated May 21 and received May 30, 1986, Leon Friedman, Esq., an attorney for Jean Harris, advised the Board that he was holding no money due or owing to Jean Harris or any assignee of hers, but that he had organized a not-for-profit corporation called "Children of Bedford, Inc." and that Jean Harris had instructed him to prepare a formal assignment to said corporation of the $45,000 second advance due Jean Harris under the Contract upon submission of a satisfactory manuscript. A copy of the letter is annexed hereto as Exhibit "J".

32. The certificate of incorporation of Children of Bedford, Inc. lists David Harris, son of Jean Harris, as its only officer and first listed director. James Harris, another son of Jean Harris, is also listed as a director. A copy of the certificate of incorporation is attached hereto as Exhibit "K".

33. The Estate of Herman Tarnower by its attorneys Sirlin, Sirlin & Nolletti has advised the Board in a letter dated February 20, 1986 that it represents the family of the victim in this case and that the victim's family will be claiming any monies escrowed by the Board under Section 632-a. A copy of the letter is annexed hereto as Exhibit "L".

34. The Board issued a Proposed Determination and Order in this matter on July 29, 1986 finding that the Contract between Jean Harris and Macmillan, Inc. dated March 19, 1985, was of the type regulated by Executive Law Section 632-a in that it was for the autobiography of a woman nationally famous only because of her crime; that a copy of the Contract or proposed contract should have been turned over to the Board in 1985 or at least prior to the payment of the fifty thousand dollar advance to Jean Harris; that Jean Harris was familiar with the Board's Section 632-a procedures having successfully petitioned the Board in 1982 for a ruling exempting the moneys she received from *McCall's Magazine* for an article solely on prison life from being escrowed under the statute. [See Determination and Order, dated September 10, 1982, *In the Matter of A Contract Between Jean Harris and McCall Publishing Company* attached as Exhibit "M"]; that in the Board's opinion no credible evidence had been submitted by Macmillan, Inc. to support its contention that it believed the

book for which it had contracted would not in any way involve the crime for which Jean Harris was convicted; that the book contained both Jean Harris' version of a re-enactment of the crime for which she was convicted as well as expression of Jean Harris' thoughts, feelings, opinions, and emotions regarding the crime; that The Lantz Office as an agent of Jean Harris was a representative under Executive Law Sections 621(6) and 632-a and could make an application to the Board for payment of necessary expenses for the production of moneys paid into the escrow account to be established by the Board in this case; that with respect to the announced intention of Jean Harris to assign all or part of her advance and royalties under the Contract to a not-for-profit corporation which had been established by her attorney, Section 632-a(9) specifically and clearly nullified any such assignment as against the public policy of this State; and that any assignee of Jean Harris was deemed a "representative" of the person convicted of the crime pursuant to Executive Law Section 621(6) and therefore as a representative of Jean Harris, Children of Bedford, Inc. is subject to the same provisions of Executive Law Section 632-a with regard to all moneys received as is Jean Harris.

Accordingly, the Board ordered, *inter alia*:

(a) that all monies paid or payable to Jean Harris or her representatives under the Contract must be turned over to the Board to be held in escrow for the benefit of the victims of the crime for which Jean Harris was convicted.

(b) that in the event Jean Harris fails to turn over to the Board moneys paid to her in the amount of $45,000.00 plus interest within thirty (30) days after issuance of a Final Determination and Order of the Board in this matter, that Macmillan, Inc. shall turn over to the Board the total of moneys it wrongfully distributed to Jean Harris through The Lantz Office in the amount of at least Forty-five Thousand Dollars ($45,000) plus legal interest from March 19, 1985;

(c) that Macmillan, Inc. turn over to the Board forthwith the second advance now due to be paid to Jean Harris, to with the sum of Fifty Thousand Dollars ($50,000) as well as any and all future royalties or other moneys that would otherwise be payable to Jean Harris or her representatives under the Contract;

(d) that The Lantz Office pay over to the Board to be escrowed pursuant to Executive Law §632-a the sum of Five Thousand ($5,000), received from Macmillan, Inc., as well as any other past or future moneys received or to be received from the Contract or any successor or modification to the Contract;

(e) that Macmillan, Inc. and The Lantz Office submit a quarterly and cumulative accounting of all moneys paid and payable to Jean Harris, her representatives or assigns, derived from the work *Stranger in Two Worlds*. A copy of the Proposed Determination and Order is affixed hereto as Exhibit "N".

35. Objections to the Proposed Determination and Order were filed by Leon Friedman, on his own behalf and as attorney for Children of Bedford, Inc.; Jan F. Constantine, Associate General Counsel for Macmillan, Inc.; and The Lantz Office by its attorney Barry Lee Cohen. A copy of the Statements of Matters to be Heard at the hearing is annexed as Exhibit "O".

36. Subsequent to the issuance of the Proposed Determination and Order, hearings were then held in the Albany Office of the Board before George L. Grobe, Jr., Board Member and designated Hearing Officer, on October 2, 1986, November 14, 1986, February 10, 1987 and June 3, 1987 to take testimony in connection with the interested parties' objections to said Proposed Determination and Order.

37. On September 4, 1987 Mr. Grobe issued his report pursuant to 9 NYCRR 526.1. A copy of the report is affixed hereto as Exhibit "P". On September 28, 1987 at a duly convened Board meeting, Board Members Fischetti, McGrath, and Petromelis, constituting a Board Quorum, unanimously adopted the report prepared by Mr. Grobe.

38. In its Final Determination and Order dated October 26, 1987 the Board affirmed and adopted its Proposed Determination and Order dated July 28, 1986 with the following modifications:

(a) After review of The Lantz Office's application to retain its literary fees pursuant to Executive Law Section 632-a (8) the Board determined that The Lantz Office was entitled to its commission equal to ten (10%) percent of all moneys payable to Jean Harris or her

representatives or assigns by reason of her contract with Macmillan, Inc. for the production of the work *Stranger in Two Worlds* and arising out of any other publication of the work or the sale, lease, license or other disposition, or rights therein or thereto; except that such commission shall be twenty (20%) percent in respect to the sale, lease, license or other disposition of foreign language rights.

(b) In recognition of the common trade practice of issuing semi-annual accounting reports, the Board was of the opinion that that portion of the Proposed Determination and Order should be modified to permit a semi-annual accounting. A copy of the Final Determination and Order is affixed hereto as Exhibit "Q".

Response to Specific Argument of Petitioners

39. Petitioners contend that the Son of Sam Law deters the creation of and publication of books about crime. Section 632-a was not intended to and does not deter the creation and publication of books about crime written by or with the assistance of persons who admit to or are convicted of a crime.

40. A reading of the plain terms of the statute shows it does not contain any prohibitions against the creation or publication of books about crime. In fact, it does not prevent any publisher from providing the convicted person with financial remuneration for his crime story. Nor does the statute prohibit compensation to non-criminal authors or literary agents. The statute merely requires that financial remuneration due the criminal be escrowed for a five year period so that a victim of criminal acts has a source against which he can claim if and when a civil judgment against the criminal is obtained.

41. Indeed, the Board is presently working on ten other cases in which it has determined that Section 632-a applies. These cases, which are at various administrative stages, include three contracts with Jack Henry Abbott, a convicted murderer, in which the Board has issued Final Determination and Orders and established three escrow accounts; a contract for a magazine article written with the assistance of Mark David Chapman, convicted murderer of John Lennon, in which a Proposed Determination and Order has been issued and a hearing pending; a contract for a book

written with the assistance of Michelle Sindona, convicted of 65 counts of fraud, conspiracy, making false bank statements and perjury, in which a Proposed Determination and Order has been issued; and a contract involving John Wojtowitz, convicted bank robber upon whom the movie "Dog Day Afternoon" is based, in which one escrow account was established and depleted by victim judgments and creditors and a second escrow account established in May 1987. The Board also is investigating approximately ten other cases in which a convicted person or his representative may have received monies for his crime story.

42. Petitioners contend that due process was denied because they were not advised which passages of the book between pages 123 and 192 specifically violated Executive Law Section 632-a. The Board held, however, that the language of the contract involving the book came within the terms of the statute. We then received the book only to make certain that it comports with the contract.

43. Contrary to petitioners' argument, fair notice does not require the Board to specify which particular words or passages of the book support the language of the contract. It should be noted, however, that the Board does not agree with petitioners that trial transcripts alone cannot implicate the statute. In Ms. Harris' book, however, the Board concluded that the overall discussion of the crime, including the transcripts, in pages 123 - 192 made it clear that the contract between Mcmillan, Inc. and Ms. Harris came within the purview of Section 632-a.

WHEREFORE, your deponent respectfully prays that petition be denied in all respects.

Dated: Albany, New York
October 27, 1988

/s/
Lorraine Felegy, Counsel

SUBSCRIPTION OMITTED